THE

CIVIL PROCEDURE

OF THE

EAST INDIA COMPANY'S COURTS,

IN THE

PRESIDENCY OF FORT ST. GEORGE,

IN

SUITS AND APPEALS.

BY

SAMUEL R. DAWES,

A DISTRICT MOONSIFF OF THAT PRESIDENCY.

BENGAL SECRETARIAT LIBRARY.

MADRAS:

PRINTED BY L. C. GRAVES, CHURCH OF SCOTLAND MISSION PRESS,
POPHAM'S BROADWAY.

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TO

THE JUDGES OF THE COURT OF SUDR ADAWLUT,

THIS VOLUME

IS,

WITH PERMISSION,

RESPECTFULLY DEDICATED

BY

THEIR MOST OBEDIENT AND

HUMBLE SERVANT,

SAMUEL R DAWES

PREFACE.

THE great assistance which Macpherson's Civil Procedure has proved to Practitioners in the Mofussil Courts has induced the Author of this work to attempt a compilation of a somewhat similar nature, expressly applicable to this Presidency. Several volumes have heretofore appeared, the object of which was to reduce the Regulations and Acts into something like order. It is not intended to challenge comparison with the labors of previous writers, but the want of some such book as the present is still admitted on all hands. In endeavoring to fill the void, not only have the various provisions of the Regulations and Acts which govern civil procedure in all its parts been gathered together under distinct and separate heads, alphabetically arranged, so as to afford the readiest reference for the Practitioner, but the rulings of the Sudr Court upon various points which have received judicial construction or decision have been collated from the Court's Circular Orders, Letters and Proceedings, the Rules for Pleadings and Procedure, and the decided Cases.

In offering this Volume to the Legal Profession, the Author feels that, with all his desire to ensure accuracy and completeness, there must exist errors which have escaped his observation. He trusts however that, on account of the merit of his object, he may meet with lenient criticism; and his wish is that he may have succeeded in supplying a want much felt, by placing in the hands of Judges and Pleaders a hand book of easy reference on the existing Procedure of the Civil Courts. The promised amalgamation of the

Courts and the promulgation of an entirely new Code of Procedure may perhaps at some future time supersede the present Volume; but that period seems so very indefinite, that he feels he would not on that account be justified in withholding this Volume from publication.

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ABBREVIATIONS USED.

Cl.—Clause.

Sec.—Section.

Reg.—Regulation.

C. O.—Circular Order of the Sudr Udalut.

S. U. Pro.—Proceedings of the Sudr Udalut.

S. U. Dy.—Diary of the Sudr Udalut.

C. L.—Circular Letter of the Sudr Udalut.

R. P. S. U.—Rules of Procedure promulgated by the Sudr Udalut.

D. S. U. S. A.—Decree of the Sudr Udalut in Special Appeal.

F. U. Pro.—Proceedings of the Foujdary Udalut.

F. U. Dy.—Diary of the Foujdary Udalut.

R. P. C.—Rules issued by the Privy Council.

E. M. C.—Extract Minutes of Consultation.

F. S. G. G.—Fort St. George Gazette.

GOVERNMENT OF BENGAL

ACCOUNTS.

General system of making entries.

1. THERE should be a separate account of every kind of deposit in the Treasury of a Court, and every item of receipt in each separate account should be entered distinctly in one page and the repayment written off on the opposite page, the Judge certifying each entry of receipt and disbursement by his own signature.(a)

2. District Moonsiffs should also keep a record of all receipts and payments in their Courts, duly attested by their own signature.(b)

English numerals should be used in all accounts.

3. English numerals should be used by the Judicial authorities in all public accounts (c)

Periodical schedule should be forwarded to Sudr Court.

4. Officers in charge of Judicial Treasuries should, within the 15th January and 15th July of each year, forward to the Sudr Court a schedule of the monies under their official custody at the close of the previous half year.(d)

What the schedule should contain.

5. In the above schedule every item should be exhibited, it being distinguished between funds which may be received on account of private individuals and those on account of Government; (e) also between monies received from District Moonsiffs and Sudr Ameens and those appertaining to the Civil Court.(f) The accounts of each Court should be so kept as to enable the Officer in charge of its treasury at once to effect a distribution of the entire amount.(g)

Collectors should grant Receipts of money deposited with them by the Courts.

6. When a Court may deposit money with a Collector, the Collector should give a receipt for the specific sum deposited and be responsible for the amount. The practice of receiving

(a) C. O. 15th Dec. 1834, and S. U. Pro 18th Jan. 1855.
(b) Ibid.
(c) C. O. 29th April 1850, No. 146, D
(d) C. O. 3d July 1845, No. 95.
(e) C. L. 22d February 1847.
(f) C. L. 28th February 1851
(g) C. L. 5th September 1846.

and returning under seal, deposits lodged with Collectors by Judicial officers should be confined to deposits not consisting of money.(h)

7. Collectors are authorized to comply with all requisitions made under the orders of the Civil Courts or of the Sudr Adawlut, for the refund of monies received by them from the Courts.(i)

A Court may draw upon the Collector for sums required for ordinary monthly expenses.

8. The practice found generally to prevail in the Courts, of making use temporarily of the funds deposited in Court by the suitors, for the purpose of defraying the ordinary expenses of the month, was held by the Sudr Adawlut to be objectionable, and the several Officers in charge of Courts were authorized to draw upon the Collector for the sums they may require to meet disbursements; the amount so advanced in the course of the month being deducted from the amount of the monthly Indent.(j)

9. All sums so drawn from the Revenue treasury for prospective disbursement should be refunded at the earliest possible date or otherwise balanced.(k)

A Vakeel cannot draw money unless specially authorized by a Vakalutnamah.

10. No money received into Court on account of a party can be paid to a Vakeel, save under specific authority conveyed by a Vakalutnamah. A Judicial Officer paying away money in any other mode is personally responsible for such disbursement.(l)

(h) C. O. 10th August 1826.
(i) C. O. 19th January 1835, No. 8.
(j) C. O. 26th October 1836.
(k) C. L. 5th May 1846.
(l) C. O. 26th June 1855, No. 136.

AMEENS.

1. In cases of disputed property regarding lands, houses or their limits or boundaries, in which the Court may deem a local investigation desirable, and sees fit to do so, the Court may appoint an Ameen for the purposes of such investigation.(*m*)

In what cases an Ameen may be employed.

2. The Ameen so appointed should be required to swear or make a solemn affirmation that he will submit to the Court a true and faithful report of the several matters he may be directed to investigate; and that he will not take or receive, directly or indirectly, from either party, any gratuity or consideration, besides the sum the Court may allow him.(*n*)

To what points he should swear or make solemn affirmation.

3. The Ameen should be ordered to make his report in writing, subscribed with his name, and to deliver it into Court on the date specified in his commission. The report should be received by the Court as evidence in the cause, with regard to the matters which the Ameen may have been commissioned to investigate, and no other.(*o*)

When and how he should make his report.

4. The Court may order such sum to be paid to the Ameen as may be thought reasonable for his trouble; the amount being added to the costs and paid by the party against whom the Decree may be passed. The Court should however be careful that expenses are not unnecessarily incurred by the Ameen, by delay or other means.(*p*)

By whom the expense incurred by his employment is payable.

(*m*) Sec. 18, Reg. III., 1802, S. U. Pro 9th February 1835.

(*n*) Sec. 18, Reg III., 1802.

(*o*) Ibid.

(*p*) Sec. 18, Reg. III., 1802.

APPEALS.

SECTION I.

REGULAR APPEALS TO THE ZILLAH JUDGE, SUBORDINATE JUDGE AND PRINCIPAL SUDR AMEEN.

In what case a regular appeal lies to a Zillah Judge.

1. ANY person dissatisfied with the decision of a District Moonsiff in an original suit for sums of money or other personal property of a value or amount exceeding 20 rupees, or in a suit for property in land of whatever value, or with the decision of a Sudr Ameen, Principal Sudr Ameen, or Subordinate Judge, in any original suit, is entitled to prefer a regular appeal from such decision to the Zillah Judge within the limits of whose jurisdiction the Lower Court may be situated.(q)

When Appeals from District Moonsiff may be preferred to a Sub-Judge or Principal Sudr Ameen.

2. Whenever however a Subordinate Judge's or Principal Sudr Ameen's Court may be established at a place remote from the station of the Zillah Court, it is competent to the Sudr Udalut to order appeals from decrees of District Moonsiffs stationed within the limits of such Subordinate Judge's or Principal Sudr Ameen's Court, to be preferred to such Court; but appeals so filed before a Subordinate Judge, or Principal Sudr Ameen, the Zillah Judge may, at his discretion, call up to his own Court for disposal by himself.(r)

Appeals from decisions of European Officers lie only to Zillah Judge.

3. A Principal Sudr Ameen cannot receive an appeal from the decision of any European Officer of Government: all such appeals lie to the Zillah Judge.(s)

Appeals from District Moonsiffs may be referred by Zillah Judge to a Subordinate Zillah Court.

4. It is competent to the Zillah Judge to refer to a Subordinate Judge or Principal Sudr Ameen in the Zillah, any appeals from District Moonsiffs which may be filed in the Zillah Court (t)

Period limited for appealing from District Moonsiffs.

5. An appeal from the decree of a District Moonsiff must be brought within thirty days from the time when the decree was delivered or tendered to the parties (u)

(q) Sec. 43, Reg. VI., 1816
Sec. 2, Reg. V., 1825.
Cl. 1, Sec. 8, Act. VII., 1843.

(r) Cl. 2, Sec. 8, Act. VII., 1843.

(s) Sec. 8, Reg. VII., 1827.
Sec. 6, Act VII., 1843. C. O. 14th December 1849.

(t) Cl. 3, Sec. 8, Act VII, 1843.

(u) Cl 1, Sec. 53, Reg. VI, 1816.

Period limited for appealing from Sub-Judge, P S Ameen or Sudr Ameen. How the time is to be calculated.

6. An appeal from the decree of a Subordinate Judge, Principal Sudr Ameen, or Sudr Ameen, should be preferred within thirty days from the date the Decree was signed and sealed, agreeably to Section 27, Regulation III. of 1802, provided that, if, within that time, an application be made by a Plaintiff or Defendant for a copy of the Decree, or for a copy or a translation of the abstract of a Decree, and if the document or documents so applied for be not delivered or tendered on the same day, to the party applying, then, for every day of such delay not attributable to the party, a day should be added to the period allowed for appealing, in as far as the right of that party is concerned.(*v*) The date on which the appeal time will expire should be certified at the end of every document furnished to a party under the preceding rule.(*w*)

Exception.

7. Should the period for appealing expire during the adjournment of a Court, it is incumbent on the party inclining to appeal, to present his petition on the date on which it is re-opened; and if he fail to do so, his appeal should not be admitted afterwards, without good and sufficient cause being shown for the default (*x*)

Ditto.

8. In cases in which the applicant may have, in the first instance, moved for a review of judgment, or preferred a summary appeal, the interval between the filing of such application and the passing of the order thereupon should be excluded from the term of appeal.(*y*)

Power of Judge to admit Appeal after expiration of limited time.

9. A discretionary power is however vested in the Appellate Court of admitting an appeal, although the Petition may have been presented after the expiration of the limited period; but in such cases the Petitioner should show satisfactory cause for not having presented his Petition within the limited period, and the Judge admitting an appeal so preferred, should enter upon the record of the trial his reasons at large for doing so.(*z*)

Petition need not contain detailed grounds of Appeal.

What should accompany it.

10. The Petition of appeal to the Zillah Judge need not, unless the party chooses, set forth the specific grounds of appeal, but may state briefly that the party being dissatisfied with the judgment is desirous of appealing from it. The Petition should be written on stamped paper, and be accompanied by the prescribed security for the eventual costs in appeal. An authenti-

(*v*) Sec. 3, Act XXXV., 1837.
Cl. 1, Sec. 8, Act VII, 1843.
(*w*) Sec. 4, Act XXXV, 1837.
(*x*) C. O. 30th November 1831.
(*y*) C. O. 20th July 1832.
(*z*) Cl. 4, Sec. 12, Reg. IV, 1802.
Cl. 1, Sec. 53, Reg. VI, 1816.

cated copy of the Decree appealed from, engrossed on stamped paper, should also accompany the Petition.(a)

Specific ground of appeal may be filed as a supplemental pleading.

11. When the specific objections to the judgment appealed from may not have been stated in the original petition of appeal, they should be subsequently filed by the Appellant in the form of a separate Pleading, written upon stamped paper.(b)

What the *detailed* Petition should contain.

12. The *detailed* petition of appeal should state the name and residence of the Respondent, the value of the matter in appeal according to the rules for valuation of land or other objects, what specifically was decreed by the original Decree, and the grounds of objection taken to the said decree.(c)

13. The grounds of objection should be stated distinctly and concisely without any argument or narrative of facts, and should be numbered consecutively. By leave of Court, such grounds of objection may be amended or added to.(d)

Appellate Court empowered to suspend execution of a Moonsiff's decree appealed from.

14. When an appeal may be received from the decision of a District Moonsiff, the Appellate Court is empowered to suspend the execution of the decree, provided the party appealing against it gives good and sufficient security, within a reasonable period to be fixed by the Court, to perform the Decree of the Court.(e)

In what cases Petition may be presented to Sub Court.

15. Should the Decree objected to have been passed by a Subordinate Judge or Principal Sudr Ameen, the original Petition of appeal may, at the option of the party, be presented to such Subordinate Judge or Principal Sudr Ameen, without an authenticated copy of the said decree. Such Petition shall not be required to contain the specific grounds or reasons of the appeal, but may state shortly that the party being dissatisfied with the judgment is desirous of appealing from it. The Petition must be written on stamped paper of the rate prescribed for similar Petitions to the Zillah Court, and be accompanied by the prescribed security for the eventual costs in appeal.(f)

It need only be a brief one, but should be on stamped paper and accompanied by security for Costs.

Appeals not admissible if security for Costs be not given.

16. Appeals are not admissible, except in the case of Paupers, unless security is given for the costs in appeal. The mere presenting of the Petition of appeal within the period limited, but without the above security, will not preserve to the Appellant his right of appeal after the expiration of that period.(g)

(a) Cl. 7 [illegible] Sec. 8, Reg. [illegible] 1816.
(b) Cl. 5, Sec. 8, Reg. XV, 1816.
(c) R. P. S. U. Cl. 51.
(d) Ibid, Cl. 52.
(e) Cl. 5, Sec. 53, Reg. VI, 1816.
(f) Cl. 2, Sec. 8, Reg. XV, 1816.
(g) Cl. 6, Sec. 12, Reg. IV, 1802.

17. When the Decree of a Subordinate Judge or Principal Sudr Ameen may be appealed from, such Subordinate Judge or Principal Sudr Ameen should suspend the execution of the Decree, provided the party against whom the decree may have been passed, either at the time of preferring his appeal, or within such reasonable period afterwards as may be fixed for the purpose, deliver security for the performance of the decree.(*h*)

In what cases execution of a Sub-Judge or Principal Sudr Ameen's decree may be suspended.

18. When the prescribed securities have been entered into, the Subordinate Judge or Principal Sudr Ameen should endorse on the petition in his own hand-writing the day of the month and year in which it was presented, and sign it with his name, causing the word "appealed" to be written in the margin of the Record immediately opposite to the Decree of the Court. The Petition should then be transmitted to the Appellate Court.(*i*)

Appeal Petition to be endorsed, signed &c. by a lower Court admitting it, and forwarded to the Zillah Judge.

19. A notice in writing should at the same time be given to the Appellant, and intimating that within fifteen days, the proceedings held in the case will be certified to the Appellate Court, and that should he fail to proceed in the appeal within six weeks after the petition of appeal shall have been filed in that Court, his appeal will be dismissed, unless he can show satisfactory ground for the delay.(*j*) The above notice should form part of the Record and be referred to in the Diary.(*k*)

Notice to appellant.

20. Should the detailed grounds and reasons for preferring the appeal not have been stated in the original petition of appeal presented to the lower Court, they should be subsequently filed in the Appellate Court as a separate pleading, and be written on stamped* paper.(*l*)

When detailed grounds of appeal have not been stated in Petition to lower Court, they should be filed as supplemental Pleading in the Court trying the Appeal.
* Vide page.

21. The Zillah Judge, after referring to the original decree in the suit, should admit the appeal, provided that the petition of appeal and the security required have been duly presented within the limited period.(*m*)

Zillah Judge should admit appeal after referring to Original decree.

22. Where a petition for an appeal may be rejected, on whatever ground, by a Subordinate Judge or Principal Sudr Ameen, such Subordinate Judge or Principal Sudr Ameen should, on the Court day next ensuing, or as soon afterwards as may be prac-

Order of rejection of appeal Petition to a lower Court should be furnished to party who is free to present his Petition afterwards to Zillah Judge.

(*h*) Cl. 5, Sec. 12, Reg. IV., 1802.
(*i*) Cl. 7, Sec. 12, Reg. IV., 1802.
(*j*) Cl. 7, Sec. 12, Reg. IV., 1802.
(*k*) C. O. 3d April 1815.
(*l*) Cl. 5, Sec. 8, Reg. XV., 1816.
(*m*) Cl. 3, Sec. 8, Reg. XV., 1816.

ticable, cause the petitioner to be furnished with a copy of the order rejecting the petition, and the petitioner should be still at liberty to present his petition of appeal to the Zillah Court in the mode, and under the restrictions abovementioned, provided that such petition set forth the previous application made to the lower Court, and the rejection of it by that Court, and be accompanied by a copy of the order of rejection, or by a declaration that such copy was applied for ten days after the same was passed, and not obtained.(n)

What such latter Petition should contain.

23. The general principles of appeal procedure are the same as those which govern the Courts in the trial of original suits.(o)

Appeals not proceeded in for six weeks to be dismissed ordinarily.

24. Should an appellant neglect to proceed in his appeal for 6 weeks, the appeal should be dismissed without any previous notice being given him. The appeal should be dismissed as of course after the expiration of 6 weeks without any proceeding on the part of the Court, or of the Respondent or otherwise, or assignment of any reasons; unless the Appellant, or his representative in case of his death, upon special application, has previously satisfied the Court of the propriety of allowing further time. The Court should record upon the proceedings the reasons at large for allowing further time in all cases in which it may be allowed; but the reasons for refusing any application for further time need not be specified (p)

In what cases appeals dismissed for default may be readmitted.

25. It is nevertheless competent to the Court dismissing the appeal to readmit the same, if application for that purpose be made by the Appellant on the stamp prescribed for miscellaneous petitions, within one month after such dismissal, and the Appellant satisfy the Court that the default was attributable to his Vakeel or to unavoidable accident.(q)

A second dismissal final.

26. But an appeal so re-admitted, and again dismissed for default, cannot be again re-admitted.(r)

What cures an Appellant's default.

27. A default of an Appellant is cured, if the opposite party passing over the default, have taken any step in the appeal, or the Court have passed judgment on the appeal, whether such opposite party has, or has not, taken any such step.(s)

Optional with Respondent to answer. Proviso.

28. In all regular appeals it should be left to the option of the Respondent either to file an answer to the petition and reasons of appeal, or not, as he may judge proper, provided, how-

(n) Cl. 10, Sec. 12, Reg. IV., 1802.
(o) Sec. 11, Reg. IV., 1802.
(p) Sec. 1, Act. XXIX., 1841.
(q) Sec. 1, Act. XVI., 1845.
(r) Sec. 2, Act. XVI., 1845.
(s) Act. XVII., 1847.

ever, that if no answer be filed by a Respondent, it is competent to the Court trying the appeal, in all cases in which it may be deemed expedient, to direct the Respondent to file an answer to the petition of appeal, or to any particular points in it which may appear to require an answer or explanation.(t)

What answer should contain.

29. The Answer should be confined to a refutation of the objections urged in the appeal petition, each refutation being numbered in accordance with the numbers affixed to the objections.(u)

Pleadings irregularly drawn up to be rejected. Proviso.

30. Pleadings not drawn up according to the prescribed rules should be returned; but a limited period (not exceeding 6 days in extension of the time prescribed for presentation of the appeal) may, when necessary, be granted to allow of an amended appeal being put in, and the primary stamp of the returned appeal should be accepted with the amended appeal as affording provision for stamp duty of its value, as in the case of original plaints returned for amendment. The indulgence of extension of the appeal time permitted under this rule should be granted but once in each case.(v)

Pleadings when completed. Exception.

31. After the Respondent has filed his answer, no further pleadings can be allowed, except the duplicate of the plaint which it may have become necessary to file, to make up the full value of the stamp where a stamp of insufficient value has, in the first instance, been inadvertently used; or such supplemental pleadings as the Court, upon a perusal of the pleadings previously filed, and from a consideration of the circumstances alleged by the parties, may deem it just and proper to admit to be filed.(w)

Notice of trial.

32. The appeal should not be brought to trial until after the lapse of eight days' notice given to the parties, by means of a Notification affixed in the Court specifying the number of the suit, the names of the parties and Vakeels, and the day of intended trial. This notice should be held to be in force until the appeal can be brought to a hearing, either on the day fixed, or any subsequent day.(x)

Pleadings to be read and points recorded.

33. Upon the day fixed as above for hearing, the Pleadings should be completed and read in open Court, and if the points at issue are not ascertainable, the object of the suit should be

(t) Cl. 2, Sec. 9, Reg. XV., 1816.
(u) R. P. S. U. Cl. I., 53.
(v) R. P. S. U. Cl. 54.
(w) Cl. 3, Sec. 9, Reg. XV., 1816.
(x) Cl. 1 and 2, Sec. 12, Reg. XV., 1816.

inquired of the parties or their Vakeels on the first day of trial, and the Court should then record the points to be established; the same course being adopted, if necessary at any subsequent stage of the appeal.(y)

Evidence to be restricted to recorded points.

34. No evidence, documentary or oral, should be received, unless expressly declared to be in proof or refutation of some point recorded by the Court.(z)

Penalty for failure to file exhibits or Lists of Articles

35. Should either party, after the date fixed in the notice referred to in para 32, fail to file his exhibits or the names of his witnesses, or to give any explanation required by the Court, he may be fined one-fourth of the stamp duty paid upon the petition of appeal, and the same for a second default; or the Court may proceed as in other cases of default.(a)

When evidence may be received by Appellate Court.

36. Evidence, however, which may be of primary importance to the case, should not be taken by the Appellate Court; but only such as may be requisite to clear up some subordinate matter in the suit, or to cast light upon, or bring to test evidence already given.(b)

Oral pleadings allowable.

37. On the hearing of appeals, oral pleadings should be allowed as in hearing original suits, on the part of the Appellant first, and then of the Respondent.(c)

38. The burthen of shewing cause against the decree appealed from rests with the Appellant. This is not however to preclude the Courts from acting upon observations they may make for themselves, of error requiring rectification existing in the Decrees appealed from.(d)

39. The Courts need only go so far into the record of the original trial as may be necessary to enable them to judge of the sufficiency of the objections raised to the decree appealed from.(e)

Decree of Lower Court may be confirmed.

40. Should the Appellate Court be of opinion that no sufficient ground has been shewn to impugn the correctness or justness of the decree of the lower Court, it is competent to it, without reference to the order of the file, to confirm the same without requiring the attendance of the opposite party, and with or

(y) Cl. 2, 3, and 4, Sec. 10, Reg. XV., 1816.
R. P. S. U. Cl. 19.
(z) Cl. 4, Sec. 10, Reg. XV., 1816.
(a) Cl. 3, Sec. 12, Reg. XV., 1816.
(b) R. P. S. U. Cl. 60.
(c) Ibid Cl. 55.
(d) Ibid Cl. 56.
(e) Ibid Cl. 57.

without a revision of the whole proceedings as the nature of the case may appear to require; and to communicate the order of confirmation through the Court from whose judgment the appeal was made, to the opposite party, with a view to enable such party to take immediate measures for the execution of the decree.(*f*)

Defect of Lower Court's proceedings to be remedied by Appellate Court.

41. Should it appear that the proceedings in the Court below have been defective, the Appellate Court should remedy such defect, unless it may be of a nature materially to affect the issue of the suit, such as when the suit may have been put by the lower Court on an essential wrong issue, or when some party of consequence to the suit may not have been included therein, or when evidence of primary importance to either side may not have been admitted, or when the decree of the lower Court may have failed to determine some material point in issue.(*g*)

Precept may issue to Lower Court calling for any required explanation.

42. When the decree of the Lower Court may admit of explanation or elucidation by the officer who may have passed the same, and such explanation may be needed by the Appellate Court for the due comprehension of the force or intent of the decree appealed from, the Appellate Court should address a Precept to the lower Court calling for the said explanation, and should take the same into consideration in disposing of the appeal.(*h*)

Improper admission or rejection of evidence not to form ground of itself for a new trial or reversal of Lower Court's decision.

43. The improper admission or rejection of evidence should not be ground of itself for a new trial, or reversal of any decision in any case, if it should appear to the Court before which such objection is raised, that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it would not have varied the decision.(*i*)

Remand.

44. When the proceedings or decree of the Court below may be found to be of so materially defective a nature as not to admit of remedy by the Appellate Court, pursuant to the rules above laid down, and of a description not allowing of a decree in appeal being given in the case as it stands, the Appellate Court, as a last resource, should remand the suit to the Court below to have the requisite remedy supplied, and judgment passed anew.(*j*)

(*f*) Sec 11, Act. VII., 1843.
(*g*) R. P. S. U. Cl. 58.
(*h*) Ibid Cl. 59.
(*i*) R. P. S. U. Cl. 62.
(*j*) Ibid Cl. 63.

45. In so remanding a suit, the Appellate Court should restrict the lower Court to the particular point or points requiring remedy, and points determined in the primary decree not connected with the matter calling for revision should remain undisturbed.(k)

46. A suit cannot be remanded for review of judgment to any Court other than that which originally tried it.(l)

47. Every order of remand under the above rule should be considered an appeal Decree, and consequently every such appeal should be filed and numbered.(m)

Questions of fact not to be considered when appeal is determinable upon a point of law.

48. In cases wherein the Appellate Court can proceed to judgment, if the grounds of objection to the Decree of the lower Court urged in the appeal petition should raise questions of law and fact, and it may appear to the Appellate Court that the case may be settled by determination of the question of law only, decree should be given accordingly without consideration of the questions of fact.(n)

Appeal may be conclusively decided upon one or more points raised in the petition of appeal, or pleaded in the answer.

49. Should the suit not admit of being thus disposed of, and the further merits of the appeal require to be dealt with, the Appellate Court should take into consideration any one or more points raised in the petition of appeal, or put forth in answer thereto which may lead to a conclusive decision; it not being necessary to deal with the remaining points raised in the appeal petition, where the means exist of arriving at a conclusive decision without pronouncing thereupon.(o)

Specific grounds of judgment when differing with that of the Lower Court to be given in the appeal decree.

50. When the Appelate Court, in coming to a decision on the appeal, may differ in any respect from the judgment arrived at by the Court below on any point or points taken up for determination, the grounds of such difference of judgment should be explicitly stated. Every position held by the lower Court in regard of such point or points is to be noticed and dealt with. When evidence is appreciated differently, the reasons for the same are to be given. It will not suffice that the Appellate Court should say that it distrusts such and such evidence accepted by the lower Court, or that such and such evidence is contradictory. The circumstances creating such distrust must be mentioned and the contradictions be specified.(p)

(k) R. P. S. U. Cl. 64.
(l) S. U. Pro. 10th Sept. 1845.
(m) S. U. Pro. 13th Feby. 1844.
(n) R. P. S. U. Cl. 66.
(o) Ibid Cl. 67.
(p) Ibid Cl. 68.

Appeal decree.

51. The appeal decree must distinctly declare how much of the original decree is upheld or reversed, where there may not be a confirmation or reversal in full of the original decree.(q)

When a decree in appeal may be reversed.

52. An Appellate Court cannot reverse a Decree in appeal, without receiving the answer of the Respondent, and considering the whole Record.(r)

53. No decision of a lower Court can be reversed, altered or remanded on account of any error, defect or irregularity not productive of injury to either party.(s)

54. An appeal preferred by one of the parties concerned in a Suit brings the entire merits of the judgment appealed from before the Appellate Court, which is competent to amend any error of which the Respondent in his answer may complain; a separate and formal appeal on his part being unnecessary for that purpose.(t)

Cross appeals.

55. When two cross appeals by opposite parties in an original suit are admitted in one case, they should be treated as distinct appeals; being separately numbered, and the Pleadings in each Appeal filed distinctly. One decree may be passed embracing both appeals; or a separate Decree on each, at the discretion of the Court.(u)

Refusal of an application for review of judgment does not bar institution of regular appeal.

56. The rejection by a lower Court of a petition for review of judgment in the first instance, or the refusal by the Sudr Court to grant a review applied for by a lower Court, does not preclude the institution of a regular appeal (provided the case be appealable) in a competent Court, subject to the conditions and rules prescribed for the admission of regular appeals.(v)

Appeals which should have been brought *summarily*, to be disposed of as summary appeals.

57. If in the case of an appeal referred by a Zillah Judge to a Subordinate Judge or Principal Sudr Ameen, it be found that it ought to have been made *summarily*, the appeal should be disposed of by such Subordinate Judge or Principal Sudr Ameen as if it had been a summary one.(w)

Litigious appeals punishable by fine.

58. It is competent to an Appellate Court to punish appeals, which may appear to be litigious by a fine to Government, proportionate to the condition of the party, and the circumstances of the case.(x).

(q) R. P. S. U. Cl. 69.
(r) S. U. Pro. 22d Dec. 1846, Para 2.
(s) Act IX, 1854.
(t) C. O. 12th Feby. 1848, No. 114 A.
(u) C. O. 4th February 1836.
(v) Cl. 4, Sec. 6, Reg. XV., 1816.
(w) C. O. 15th February 1830 B.
(x) Sec. 35, Reg. IV., 1802.

A judicial officer cannot decide an appeal from his own decree.

Such appeal should be forwarded to higher Court.

59. A Judicial Officer, European or Native, cannot sit on the trial of an appeal from a Decree passed by himself in any former capacity. Should such an Appeal be preferred to him, or be pending in his Court at the time of his taking charge thereof, he should forward the Petition of Appeal and all the Pleadings, evidence and documents to the Court to which in ordinary cases an appeal lies from his decisions; and such Court should receive and try the Appeal in the same manner as other appeals which it is empowered to try.(y)

Pauper appeals.

60. Whenever a Pauper Plaintiff, against whom a Decree has been passed, may desire to appeal therefrom, he should address himself to one of the Vakeels of the Court competent to admit the appeal, and the Vakeel, if willing to undertake the conduct of the Appeal, should draw out a petition setting forth the specific grounds on which the appeal is preferred, and present the said Petition within the period prescribed for the admission of regular appeals, together with a copy of the Decree appealed from.(z)

61. If the Court be of opinion that an appeal is necessary to correct any error or omission in the original Decree, or is otherwise requisite for the ends of justice, the appeal should be admitted on the Appellant's finding two good and sufficient securities* for his appearance, who should execute security bonds as prescribed in original suits by Paupers. The Court should then proceed in the investigation under the general rules of appeal. But if the appeal do not appear to be necessary for the ends of justice, the Court should reject the Petition; such order of rejection being final. The Plaintiff will however be still entitled to appeal upon his fulfilling the regular conditions of appeal under the regulations relative to payment of stamp duties and fees.(a)

Vide page 269.

Vide page 266.

62. The admission of persons to appeal or defend* in formâ pauperis should be in conformity with the rules prescribed for persons desirous of being admitted to plead as Paupers in original suits.(b)

63. Plaintiffs in original suits who did not sue as paupers, are admissible to appeal in formâ pauperis from the judgments passed in such original suits.(c)

(y) Cls. 1 and 2, Sec. 2, Reg. I., 1829.
(z) Cl. 1, Sec. 10, Reg. VII., 1818.
(a) Cl. 2, Sec. 10, Reg. VII., 1818.
(b) Cl. 3, Sec. 2, Reg. III., 1822.
(c) Cl. 1, Sec. 2, Reg. III., 1822.

64. Defendants in original suits are admissible to appeal in formâ pauperis from the judgments passed against them in such suits.(*d*)

65. Inasmuch as a Pauper Plaintiff, in whose favor a decree may have been passed, will be unable to obtain execution of the said Decree pending an appeal, the Court, to whom an appeal may be preferred by an original Defendant, should admit the original Plaintiff to defend the appeal as a Pauper, without further investigation.(*e*)

66. It is the duty of the Court competent to admit Pauper appeals to satisfy itself, in the event of objections being made by the other party to the admission of the applicant as a Pauper, that the property of which the said applicant was possessed at the time when the original suit was instituted, has passed from his hands, or has otherwise been rendered unavailable to him, either by the operation of the judgment from which he is desirous of appealing, or of some other judgments, or generally of causes over which he has no control.(*f*)

67. A Court is empowered to assign one of its constituted Vakeels to act on behalf of any person to present his original application or his petition of appeal, or to conduct the prosecution or defence of any appeal under the provisions of the law relating to Pauper original suits.(*g*)

68. No appeal is allowable from an order of Court admitting or refusing a party to sue as a Pauper in an original suit.(*h*)

Appeals from Collector's Decision under Regulation V., 1822.

69. An appeal lies to the Subordinate Judge from the decision of a Collector under Regulations XII of 1816, and V of 1822; and, in Zillahs where there is no Subordinate Judge, to the Zillah Judge;(*i*) but the petition of Appeal in either case should be filed within 30 days from the date of the Collector's decision.(*j*)

70. A Collector cannot be made a Defendant in an appeal against his decision under the above Regulations, any more than a Civil Judge can be called on to defend in an appeal from his Decree.(*k*)

(*d*) Cl. 2, Sec. 2, Reg. III., 1822.
(*e*) Sec. 11, Reg. VII., 1818.
(*f*) Cl. 4, Sec. 2, Reg. III., 1822.
(*g*) Sec. 12, Reg. VII, 1818.
(*h*) Cl. 4, Sec. 5, Reg. IV., 1825.
(*i*) S. U. Pro. 4th March 1854, Para 7.
(*j*) Cl. 1, Sec. 16, Reg. V., 1822.
(*k*) C. O. 5th Nov. 1839, No. 61.

71. The Judge trying such appeals is competent to call for the Collector's proceedings in the case, and to take any fresh evidence that he thinks proper;(*l*) but the decision of the Collector cannot be set aside for want of form, or for irregularity in the proceedings; but on the merits only.(*m*)

72. Appeals against summary decisions passed by Collectors under Regulation V. of 1822, should be regular appeals, the decision of the Collector occupying in the suit the same place as would an original decree in any ordinary suit.(*n*)

73. Decisions of Collectors passed under clause 4th, section 4, Regulation V. 1822, cannot be stayed (excepting as regards any costs that may be awarded). pending the decision of an appeal therefrom, preferred to the Zillah Judge; because the power of a Collector to order the sale of property attached for arrears of rent or revenue, ascertained by him to be justly due, is in such cases positive and unrestricted.(*o*)

74. The decision of a Collector under Sec. 11, Regulation V. 1822, on the complaints of persons forcibly dispossessed of their lands or crops, cannot be stayed, further than as respects the costs and damages awarded against the offender, because the decision of the Collector does not confer any *proprietary right*; but only determines the *temporary right* of occupancy or possession.(*p*)

75. The restriction laid upon the Collector by Clause 2d, Section 2, Regulation V. 1822, not to levy costs or damages till after 30 days allowed for appeal, must be held to apply to costs and damages awardable in the cases referred to in the above para.(*q*)

Appeals from Collector's Decision under Regulation IX., 1822.

76. A party feeling aggrieved by a judgment or order passed against him by a Collector under Regulation IX., 1822, in cases of embezzlement, extortion, misappropriation, &c. of public money, is at liberty, at any time within three months from the date of such judgment or order, to present to the Collector a petition of appeal addressed to the Board of Revenue, which petition the Collector should forthwith forward to the Board. The petition should be written on unstamped paper, and should state the grounds on which the petitioner deems himself aggrieved, and the redress or relief to which he considers himself entitled.(*r*)

(*l*) C. O. 23d April, 1828.
(*m*) Cl. 2, Sec. 16, Reg. V., 1816.
(*n*) S. U. Pro. 10th March 1853.
(*o*) C. O. 10th Dec. 1838, No. 56.
(*p*) C. O. 10th Dec. 1838, No. 56.
(*q*) C. O. 23d April 1828, and 10th Dec. 1838, No. 56.
(*r*) Cl. 1, Sec. 6, Reg. VII., 1828.

77. On receipt of such petition, the Board of Revenue, after making such inquiry as they may judge necessary, should either direct the relief prayed for by the petitioner, to be granted, or report the case for the orders of the Governor in Council, or simply reject the petition by endorsement under the hand of their Secretary, referring the party to seek redress, if he thinks proper, in the established Courts of Adawlut.(s)

78. No appeal preferred to a Court of Adawlut under the provisions contained in the above para. is admissible unless the plaint or petition is accompanied by the order of the Board of Revenue above referred to, and is preferred within three months from the date of the delivery of the order,(t) which date should be certified by the officer delivering the order, by an endorsement on the petition of the party.(u)

79. The appeal above provided for from the decision of a Revenue officer under Regulation IX., 1822, is intended to bring before the Court, to which it is preferred, the entire merits of the judgment appealed from.

80. It need not however be preferred to a Court of Adawlut in the form of a Civil action, which is only necessary in those cases in which the complainant may think fit to file a suit for damages against the Collector, on account of any supposed injustice in conducting the proceedings.

Construction of Section 16, Regulation IX., 1822.

81. Section 16, Regulation IX., 1822, appeared to the Court of Sudr Adawlut to provide for two courses, to either of which a party considering himself aggrieved by a Collector's decision under that Regulation, on receiving from the Secretary to the Board of Revenue the order referring him to seek redress in a Court of Adawlut, is at liberty to resort; viz. to file an original suit for damages against the Collector, wherein not only the merits of the judgment, but the propriety of the preliminary proceedings is brought in question, and the Court is called upon not only to reverse the decision, but to adjudge the Collector to pay the Plaintiff such personal damages as may be deemed equitable in compensation for the injury which the former represents himself to have sustained, independently of the judgment passed upon him, from the illegality or impropriety of the proceedings previously held: Or, if the merits of the decision only are called in question, and the reversal thereof be the only re-

(s) Cl. 2, Sec. 6, Reg. VII., 1828.
(t) Sec. 2, Reg. III., 1832.
(u) Sec. 3, Reg. III., 1832.

dress sought, to present a petition of appeal to the Civil Court, complaining of the insufficiency of the grounds upon which the Judgment has been based, and praying for its reversal.

82. In the latter case, which is merely an appeal from a penal sentence, there is no party who could be entered as a Respondent. The Collector is clearly not in such a position, for there is no claim made against him; and, under such circumstances, to require the payment by the Appellant of an institution fee, would be contrary to the established principles upon which appeals from penal sentences are allowed.

83. For the foregoing reasons, the Court of Sudr Adawlut directed that the appeals preferred under the section quoted, should be presented in the form of Motions; and only in those cases in which damages may be claimed, should the party be required to proceed by instituting a regular suit.(v)

When a District Moonsiff's decree is final.

84. No appeal can be admitted from the Decree of a District Moonsiff in suits for real property, not being property in land, and for sums of money or other personal property, the amount or value of which may not exceed twenty rupees.(w)

A District Moonsiff's decision as arbitrator not ordinarily appealable.

85. A decision passed by a District Moonsiff as Arbitrator is also not appealable, unless the Moonsiff has been guilty of corruption or gross partiality, in which case the party appealing should present his petition on the prescribed stamped paper within thirty days from the date on which a copy of the Decree may have been furnished or tendered to the party or his Vakeel, and should the partiality or corruptiou charged be established to the satisfaction of the Appellate Court by the solemn affirmation of two credible witnesses, the Decree of the District Moonsiff should be annulled, and the parties left at liberty to have recourse to another Moonsiff, or to any competent jurisdiction.(x)

Village Moonsiff's decree final.

86. Decisions of Village Moonsiffs are not appealable.(y)

Appeals from a Court's decision founded on an award of arbitration dismissable with costs.

87. A petition of appeal preferred from the decision of a Court founded on an award of arbitration, should be dismissed with costs, unless it be proved to the satisfaction of the Appel-

(v) C. O. 20th October 1853, No. 130.
(w) Sec. 43, Reg. VI., 1816, Reg. V., 1825. S. U. Dy. 7th April 1837. S. U. Pro. 1st May 1837.
(x) Sec. 58, Reg. VI., 1816.
(y) Cl. 1, Sec. 5, Reg. IV., 1816.

late Court, by the solemn affirmation of two credible witnesses, that the arbitrators have been guilty of gross corruption or partiality in the cause in which they have made the award.(z)

Dis: Punchayet's decisions not ordinarily appealable.

88. No appeal can be permitted from decisions passed by a District Punchayet; but if the Punchayet have been guilty of gross partiality, it is optional with either party in the cause to bring the matter, by petition upon stamped paper of the prescribed rate, according to the amount of the suit, before the Zillah Judge.(a)

89. The petition cannot be received, unless presented within thirty days after the date on which copies of the Decree may have been furnished or tendered to the parties or their Vakeels.(b)

90. If the petition be received, the Judge should order execution of the Decree to be stayed pending the enquiry.(c)

91. If the partiality charged against the Punchayet be established to the satisfaction of the Zillah Judge, by the solemn affirmation of at least two credible witnesses, it is competent to him to annul the decision, and the parties should be left at liberty to have recourse to another Punchayet, or to any other competent jurisdiction.(d) Provided however, that when the decision of a second Punchayet may agree with the decision of a former Punchayet in the same suit, it should be final.(e)

92. Petitions of appeal from the decisions of District Punchayets should be presented to the Zillah Judge by the parties in person or by an authorized Vakeel of the Zillah Court, to whom a fee of four annas should be allowed, and no more; the parties not being subjected to any other charge whatever.(f)

Mily: Punchayet's decisions not ordinarily appealable.

93. No appeal is admissible from a decision passed by a Military Punchayet; but if the Punchayet have been guilty of gross partiality, it is optional with either party in the suit to bring the matter by Petition, upon stamped paper of the prescribed rate, according to the amount of the suit, before the Zillah Judge within whose jurisdiction the Punchayet may have assembled.(g)

(z) Sec. 28, Reg. IV., 1802.
(a) Cl. 1, Sec. 11, Reg. VII., 1846.
S. U. Pro. 4th Mar. 1844, para 9.
(b) Cl. 2, Sec, 11, Reg. VII., 1816.
(c) Cl. 3, ibid.
(d) Cl. 4, Sec. 11, Reg. VII., 1816.
Sec. 21, Act VII., 1843.
(e) Cl. 5, Sec. 11, Reg. VII., 1816.
(f) Cl. 6, ibid.
(g) Cl. 1, Sec. 27, Reg. VII., 1832.
S. U. Pro. 4th Mar. 1844.

94. The petition cannot be received unless presented with the award complained of, within thirty days after the date on which copies of the award may have been furnished or tendered to the parties.(h)

95. If the petition be received, and the partiality charged against the Punchayet be established to the satisfaction of the Zillah Judge, by the solemn affirmation of at least two credible witnesses, it is competent to him to annul the decision complained of.(i)

96. Petitions of appeal against decisions of Military Punchayets should be presented by the parties in person, or by an authorized Vakeel of the Zillah Court, to whom a fee of four annas should be allowed and no more; the parties not being subjected to any other charge whatever.(j)

97. If, within thirty days from the date of the delivery or tender to the parties of the award by a Military Punchayet, a petition be received by the Zillah Judge accusing the Punchayet of gross partiality, the Judge should give information thereof to the Officer commanding the station at which the Punchayet had assembled, by a letter, in the following form:

SIR,

A charge of gross partiality having been received by this Court against a Punchayet, assembled by the officer in charge of the Military Police at———— to try (here specify the cause of action and names of the parties as appearing in the award.) I have the honor to inform you of the same, in order that execution of their award may be suspended until the said charge has been inquired into and the result communicated to you.(k)

I am, &c.

98. Upon receipt of the above letter, the Commanding Officer of the station should order execution of the Punchayet's award to be stayed, till a further communication be made to him by the Zillah Judge,(l) who should, when the charge has been examined and finally decided upon, communicate the result to the Commanding Officer by letter, thus:

(h) Cl. 2, Sec. 27, Reg. VII., 1832.
(i) Cl. 3, ibid.
Sec. 22, Act VII., 1843.
(j) Cl. 4, Sec. 27, Reg. VII., 1832.
(k) Cl. 1, Sec. 28, Reg. VII., 1832.
(l) Cl. 2, ibid.

SIR,

With reference to my letter under date ———, I have the honor to inform you that the charge of gross partiality preferred against the punchayet which tried (here specify the cause of action and names of the parties) not having been proved, there is no longer any cause, why the award should not be carried into execution, (or, has been proved, and the award of the said punchayet annulled by the Court.)(*m*)

I am, &c.

99. When the award of a Military punchayet has been annulled by the Zillah Judge, the parties may bring their dispute by written consent of both, before a fresh punchayet; or by complaint of either, before any other competent tribunal; provided always that if a second punchayet come to the same decision as the first, the second decision must be final.(*n*)

Village Punchayet's decisions not ordinarily appealable.

100. No appeal is permitted from decisions of village punchayets, but if a village punchayet be guilty of gross partiality, it is optional with either party in the suit to bring the matter by petition upon stamped paper of the prescribed rate, according to the amount of the suit, before the Subordinate Judge or Principal Sudr Ameen of the Zillah.(*o*)

101. The petition cannot be received, unless presented, with the Decree complained of, within thirty days after the date on which copies of the Decree were furnished or tendered to the parties or their Vakeels.(*p*)

102. If the petition be received, the Subordinate Judge or Principal Sudr Ameen should order the execution of the Decree to be stayed pending the enquiry.(*q*)

103. If the partiality charged against the Punchayet be established to the satisfaction of the Subordinate Judge or Principal Sudr Ameen by the solemn affirmation of at least two credible witnesses, he should, in every case, whatever the amount or value of the suit may be, submit his proceedings with his opinion on the case to the Zillah Judge, who, provided the charge be proved by such proceedings to his satisfaction, should annul the decision, and

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(*m*) Cl. 3, Sec. 28, Reg. VII., 1832.
(*n*) Sec. 29, Reg. VII., 1832.
(*o*) Cl. 1, Sec. 11, Reg. V., 1816.
S. U. Pro. 4th March 1844. para 6.
(*p*) Cl. 2, Sec. 11, Reg. V., 1816.
(*q*) Cl. 3, Sec. 11, Reg. V., 1816.

the parties left at liberty to have recourse to another Punchayet or to any other competent jurisdiction ; (r) provided that where the decision of a second Punchayet may agree with that of a former Punchayet in the same suit, it should be final.(s)

104. Petitions of appeal from decisions of Village Punchayets to the Subordinate Judge or Principal Sudr Ameen should be presented by the parties in person or by an authorized Vakeel of the Court, to whom a fee of four annas should be allowed and no more ; the parties being subjected to no further charge whatever.(t)

Sudr Ameens and District Moonsiffs cannot receive appeals.

105. Sudr Ameens and District Moonsiffs are prohibited from receiving petitions of appeal from their own decisions.(u)

(r) Cl. 4, Sec. 11, Reg. V., 1816.
S. U. Pro. 4th March 1844, para 6.
(s) Cl. 5, Sec. 11, Reg. V., 1816.
(t) Cl. 6, Sec. 11, Reg. V., 1816.
(u) S. U. Pro. 29th Octr. 1844, para 3.
Cl. 2, Sec. 53, Reg. VI., 1816.

APPEALS.

SECTION II.

SUMMARY APPEAL TO THE ZILLAH JUDGE, SUBORDINATE JUDGE, AND PRINCIPAL SUDR AMEEN.

In what cases summary appeal lies to Zillah Judge.

1. It is competent to the Zillah Court to receive a summary appeal from the order or decree of a Lower Court refusing to admit an original suit regularly cognizable by it, or having admitted a suit, may have dismissed it without an investigation of the merits; also from the order or decree of a Subordinate Judge or Principal Sudr Ameen dismissing, without a decision on the merits, an appeal either referred to him by the Zillah Judge, or filed before him in the first instance.(*v*)

A Defendant cannot prefer summary appeal.

2. It is not open to a Defendant to prefer a summary appeal.(*w*)

Period limited for appealing.

3. A summary appeal should be preferred within the same limited period as is prescribed for the admission of regular appeals.(*x*)

How appeal should be preferred.

4. The petition of appeal should be presented by the petitioner in person or by an authorized Vakeel, being written on stamped paper of the value prescribed for miscellaneous petitions, and accompanied by an attested copy of the order or decree objected to.(*y*)

No Institution Stamps required.
In what cases security will be requisite.

5. The petitioner is not however liable to the payment of the stamp duty substituted for the institution fee by Section 13, Regulation XIII., 1816, nor can he be required to furnish any security, except such as may be eventually necessary for staying the execution of the Decree from which the appeal may be preferred.(*z*)

Proceedings on summary appeal.

6. No notice need be given to the Respondent; nor may his attendance be required on a summary appeal being preferred, unless, in any particular instance, the Court may deem it proper to adopt that measure; nor should any pleadings or proceedings be held on such summary appeal, excepting such as may suffice

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(*v*) Cl. 3, Sec. 5, Reg. XV., 1816.
Sec. 1, Act XVII., 1838.
Cl. 1 and 4, Sec. 8, Act VII., 1843.
Sec. 4, Act IX., 1844.
R. P. S. U. Cl. 17.

(*w*) S. U. Pro. 1st January 1850.

(*x*) Cl. 5, Sec. 5, Reg. XV., 1816.
Cl. 1, Sec. 8, Act VII., 1843.

(*y*) Cl. 6, Sec. 5, Reg. XV., 1816.

(*z*) Cl. 7, Sec. 5, Reg. XV., 1816.

to determine whether the suit was, or was not rejected or dismissed by the lower Court on sufficient grounds, and in conformity with the Regulations.(a)

7. If upon such summary proceedings it should appear to the Court that the suit or appeal was rejected in the first instance, or after having been admitted, was dismissed, without an investigation of the merits, upon insufficient grounds, or in opposition to the Regulations, it is competent to the Zillah Court to issue a precept to the lower Court or Officer from whose order or decree the petition of appeal may have been presented, requiring that the original suit or appeal be again admitted on the file, and a decision passed upon it, after mature consideration of its merits.(b)

Punishment for litigious appeals.

8. If a summary appeal preferred to a Zillah Court be found to be groundless or litigious, the Court is authorized and required to reject the petition and to impose such fine on the litigious Appellant as may appear to be proportionable to the condition of the party and to the circumstances of the case; but such fine should not in any case exceed the amount of the stamp duty which would have been payable by the Appellant on the institution of such case as a regular suit or appeal. All such orders imposing fines, or rejecting Petitions of summary appeal are final and conclusive.(c)

9. Where a suit or appeal may have been dismissed by a Court under Act XXIX, 1841, on the ground that the Plaintiff or Appellant had made default by neglecting to proceed in it for six weeks, no appeal can lie against the order of dismission, other than a summary appeal on the fact of default.(d)

Summary appeal cannot be instituted in formâ pauperis.

10. A summary appeal cannot be instituted in formâ pauperis;(e) nor can an appeal lie from the order of a Court admitting or disallowing party to sue as a pauper.(f)

Summary appeal lies from order upon objections raised to valuation of suit; when it should be preferred.

11. A summary appeal is preferrible to the Zillah Judge from an order of a lower Court upon objections raised by the Defendant to the Plaintiff's valuation of suit, as affecting the jurisdiction of the Court; but the Zillah Judge should not admit the appeal unless preferred within one month after the date of the order appealed from, or unless sufficient reason be assigned to his satisfaction for the failure to present it within that period.(g)

(a) Cl. 8, Sec. 5, Reg. XV., 1816.
(b) Cl. 9, Sec. 5, Reg. XV., 1816.
Cl. 4, Sec. 8, Act VII., 1843.
(c) Cl. 10, Sec. 5, Reg. XV, 1816.
(d) Sec. 3, Act XXIX, 1841.
(e) Sec. 13, Reg. VII, 1818.
(f) Cl. 4, Sec 5, Reg. IV., 1825
(g) Cl. 1, Sec. 4, Reg XII., 1809.

12. The Petition of Appeal from a lower Court's order above alluded to may be presented, at the option of the Appellant, either to the Court which passed the order, or to the Zillah Court. In the former case, the lower Court should immediately transmit the petition, with all papers and proceedings relative thereto, for the determination of the Zillah Court, until the receipt of which, no further proceedings upon the cause should be held in the lower Court.(*h*) The decision of the Zillah Judge upon the appeal is final.(*i*)

The Petition may be presented either to lower or appellate Court.

Decision of Zillah Judge final.

13. No stamp duty is demandable upon such appeals.(*j*)

No Stamp duty required in such appeals.

14. If, on the trial of any such summary appeal, the Zillah Judge should be of opinion that the original suit was not, from its amount regularly cognizable in the lower Court, but that the irregularity in the institution of the suit did not arise from any fraudulent motive on the part of the Plaintiff, it is competent to the Zillah Judge to direct the lower Court to refund to the Plaintiff the amount of stamp duty paid by him on instituting the suit in the lower Court, and the Plaintiff should be permitted to institute his suit *de novo* in the Zillah Court.(*k*)

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15. A summary appeal lies to the Zillah Judge from an order passed by a Subordinate Judge or Principal Sudr Ameen in executing Decrees referred to him for that purpose by the Zillah Judge.(*l*)

Interlocutory orders appealable.

16. Interlocutory orders of the lower Courts upon claims to property attached in execution of a process of Court are summarily appealable to the Zillah Judge. The Court attaching such property and rejecting such claims should always, before proceeding to sale, allow the claimants time to appeal; but after the sale has taken place, claimants to the property sold should be referred to a regular suit.(*m*)

17. The restrictions relative to the period of admission of regular appeals apply to appeals from interlocutory orders; and in cases in which petitions may be presented praying for the consideration of an interlocutory order, the period which may elapse between the presentation and disposal of such petitions can alone be added to the ordinary term of appeal.(*n*)

(*h*) Cl. 2, Sec. 4, Reg. XII., 1809.
(*i*) Cl. 1, Sec. 4, Reg. XII, 1809.
(*j*) Cl. 3, Sec. 4, Reg. XII., 1809.
(*k*) Cl. 2, Sec. 24, Reg. XIII, 1826.
(*l*) Sec. 14, Act VII., 1843.
(*m*) C. O. 6th Feb. 1837, No. 41, B.
(*n*) C. O. 8th Nov. 1850, No. 118, E.

Order dismissing or suspending a ministerial servant, appealable.

18. Appeals from orders passed by a lower Court dismissing or suspending a ministerial servant, lie to the Zillah Judge, whose orders upon such appeals are appealable to the Sudr Court.(o)

Decisions passed in matters of treasure trove appealable.

19. The summary decisions of a Subordinate Judge or Principal Sudr Ameen in matters of treasure trove are open to summary appeal to the Zillah Judge, under the general rules relating to summary appeals.(p)

20. The decision of the Zillah Judge on such appeal is final; unless the Sudr Court should, on the face of the Decree, or on inspection of any document exhibited with it, see just and sufficient grounds for admitting a second summary appeal to that Court; in which case only such further appeal may be admitted and proceeded upon, under the general rules for summary appeals.(q)

Decree from which appeal lies, cannot be quashed upon Miscellaneous Petition.

21. It is not competent to any Court upon a miscellaneous petition to quash a Decree from which a regular or summary appeal lies; but in cases where no Appeal lies, if, on presentation of a miscellaneous petition, or by any other regular means, it should appear that a Decree has been passed plainly contrary to the Regulations, the case should be reported for the orders of the Sudr Court.(r)

Zillah Judge may receive Petitions respecting suits in matters depending or decided in a lower Court.

22. The Zillah Judge is authorized to receive any petition respecting suits or matters that may be depending, or have been decided in any lower Court within his jurisdiction, and should it be proved to his satisfaction that the petition was presented, or that due means were used to effect its being presented, to the Judge of the Lower Court, and that he refused or omitted to receive it and proceed on it; or, in the last mentioned case, that undue means were used by any of the officers of the Court to prevent the petition being presented, the Zillah Judge is empowered by precept to direct the Lower Court to receive the petition, and to proceed respecting it according to the regulations.(s)

When a Sub Judge or Principal Sudr Ameen may receive summary appeal. Zillah Judge may call up to

23. Whenever the Court of a Subordinate Judge or Principal Sudr Ameen may be established at a place remote from the station of the Zillah Court, the Sudr Adaulut, with the sanction of the Governor in Council, may authorize such Subordinate

(o) S. U. Pro. 21st April 1853.
(p) Sec. 9, Reg. XI, 1832.
(q) Sec. 10, Reg. XI., 1832.
(r) C. O. 8th Feb. 1841, No. 76.
(s) Sec. 8, Reg. IV., 1802.

Judge or Principal Sudr Ameen to receive summary appeals from the orders or decrees of District Moonsiffs stationed within the limits of his jurisdiction. But an appeal so received by a Subordinate Judge, or Principal Sudr Ameen, the Zillah Judge may at his discretion, call up to his own Court for disposal by himself.(t)

his own Court any such appeal.

24. The Zillah Judge may refer to a Subordinate Judge, or Principal Sudr Ameen any summary appeals from orders of District Moonsiffs, which may be filed in the Zillah Court.(u)

Zillah Judge may refer appeals to Sub Judge or Principal Sudr Ameen.

25. The rules relating to the admission and disposal of summary appeals to the Zillah Court are applicable to appeals filed before, or referred to, a Subordinate Judge or Principal Sudr Ameen, under the provisions of the two preceding paras.(v)

What rules apply to appeals referred to Sub. Judge or P. S. Ameen.

(t) Cl. 2, Sec. 8, Act VII., 1843.
(u) Cl. 3, Sec. 8, Act VII., 1843.
(v) Sec. 2, Act XVII., 1839.

APPEALS.

SECTION III.

SPECIAL APPEAL TO THE SUDR COURT

THE law of Special Appeal is now regulated as to all petitions of Special Appeal presented after the 18th November 1853, by Act XVI of 1853, which was passed on that day. Its principal provisions are as follows :—

Grounds of special appeal.

IV. A Special Appeal shall lie to the Sudr Court from any decision passed on regular Appeal in any of the Civil Courts subordinate to the Sudr Court, on any of the following grounds, namely :

1st. On the ground that the decision hath failed to determine all material points in difference of the cause, or hath determined the same or any of them contrary to law, or usage having the force of law.

2nd. On the ground of misconstruction of any document.

3rd. On the ground of any ambiguity in the decision affecting the merits.

4th. On the ground of any substantial error or defect in procedure, or in the investigation of the case, provided such error or defect be apparent on the record, and shall have produced, or be likely to have produced, any error or defect in the decision of the case upon the merits. Provided always that no such Special Appeal shall lie to, nor any such decision be reversed, altered, or remanded by, the said Sudr Court, upon the ground that the decision of any question of fact is contrary to, or not warranted by, the evidence duly taken in the cause, or any probability deduced from the Record.

In what Court petition should be presented. Time.

V. Clause 1st. A petition of Special Appeal may be presented in the Sudr Court; or it may be presented in the Court in which the decision objected to was passed, for transmission to the Sudr Court. In either case, the petition must be presented within three months from the decision appealed against, unless the petitioner can show just and reasonable cause, to the satisfaction of

the Sudr Court, for not having presented it within such limited period.

Clause 2nd. Every such petition of Special Appeal shall be accompanied by authenticated copies of the Decree objected to, and of the Decree of the Court of Original Jurisdiction. If the Appeal be presented in the Court in which the Decree objected to was passed, such last mentioned Court shall forthwith forward the same to the Sudr Court, with an endorsement thereon of the date on which it was presented, together with the copies of the Decrees of the lower Courts by which it was accompanied.

It should be accompanied by copies of lower Court's decrees.

Clause 3rd. An application for an extension of the time for presenting a petition of Special Appeal may be made directly to the Sudr Court, or through the intervention of the lower Court, at the option of the applicant.

Extension of time may be applied for.

VI. Every Petition for a Special Appeal shall set forth concisely, and under distinct heads, the grounds of objection to the decision appealed, without any argument or narrative, and such grounds shall be numbered consecutively.

What the Petition should contain.

VII. Clause 1st. The Sudr Court shall cause lists of the Petitions which shall be presented for the admission of Special Appeals, to be prepared weekly, and to be affixed in the Court House of the said Sudr Court. The said lists shall set forth the dates on which such petitions are likely to be brought on for hearing, and the said Sudr Court shall cause extracts from the said lists to be transmitted to the Courts in which the decisions on regular Appeal were passed; such extracts shall be affixed in some conspicuous place in the last mentioned Courts, and extracts therefrom shall be transmitted by such Courts to the Courts in which the original suits were instituted, and such last mentioned extracts shall be affixed in some conspicuous place in the said last mentioned Courts. The time to be fixed by the Sudr Court for the hearing of any petition shall not be less than six weeks from the date of despatch of the extracts referring to the same from the Sudr Court. The date of the despatch of each extract shall be notified thereon.

List of Petitions should be affixed in Court House.

Clause 2d. At any time within the period of one month from the date of the despatch of the extract referring to the Appeal, or within such further time as the Sudr Court shall, for just and reasonable cause, allow for that purpose, the Respondent may present a separate petition of Special Appeal in the Sudr Court, upon any of the grounds upon which a Special Appeal will lie against any part of the decision of the

When Respondent may Petition.

lower Court, not involved in the Appeal of the opposite party, provided the Respondent shall not previously have presented a Special Appeal in the cause. Such petition, however, shall not be inserted in any list to be prepared in pursuance of the foregoing clause.

Clause 3rd. If the petition of Appeal, or the Appeal of either party, be dismissed, withdrawn or rejected, the application for Appeal, or the Appeal, as the case may be, of the other party, shall be heard alone, according to the provisions of this Act; otherwise, all applications for Special Appeal, and all admitted Special Appeals, relating to the same decision, shall respectively be heard together, unless the Sudr Court shall otherwise order in any case.

Hearing of application.

VIII. Clause 1st. It shall be lawful for one or more of the Judges of the said Sudr Court, to hear applications for Special Appeals, duly presented as aforesaid, in the presence of the appellant or his pleader, and also of the Respondent or his pleader, or such of them as shall attend, and it shall be competent for such Judge or Judges to call for and peruse any document forming a part of the record of the cause, or to order the amendment of the petition of Special Appeal forthwith, or within such time as he or they may order, not exceeding one month from the date of such order, or to make an order of reference to the Court which pronounced the decree appealed from, for further information or explanation; or to pass an order for admitting the Appeal for hearing, or for rejecting the same: or if it shall appear that the facts have not been sufficiently recorded, or that the case is otherwise so insufficient, that the Sudr Court could not, if the Appeal were admitted, pass a final decree thereon, but for no other cause, to issue an injunction, setting forth the errors, irregularities, or other defects in the decision appealed against, and remanding the same to the Court by which the same shall have been passed, in order that such decision may be reviewed by the last mentioned Court, and that such order or Decree may be passed thereon as shall be conformable to law. Provided always that no such remand shall be ordered as aforesaid, except upon grounds whereon a Special Appeal will lie under this Act. If any such application shall be heard by only two Judges, and they differ in opinion as to admitting the Appeal for hearing, it shall be admitted.

Remand.

Order of admission should state reasons.

Clause 2nd. An order for admitting a Special Appeal for hearing shall specify, for the information of the Court, the

grounds upon which it was admitted—but neither the Court nor the parties shall be confined to those grounds upon the hearing.

Clause 3rd. If an order be passed for admitting the Special Appeal for hearing, the case shall be brought on to the file of the Court to be heard and determined in due course.

When appeal should be brought on the file.

Clause 4th. If an order for rejecting a Special Appeal, or for remanding a case, be made by one Judge only, such order shall not be final, but it shall be laid before another Judge of the same Court, who shall hear the application for the appeal in the presence of the Appellant or his pleader, and also of the Respondent or his pleader, or such of them as shall attend. If the second Judge be of opinion that the appeal ought to be rejected or the case remanded, he shall pass a final order to that effect; if he be of opinion that the appeal ought to be admitted, he shall pass an order for admitting the same, and the appeal shall thereupon be admitted, heard and determined in due course, in the same manner as if it had been admitted in the first instance.

Order of rejection by single Judge not final.

Clause 5th. A final order for remanding a case shall not be made, without notice to the Respondent to enable him to appear and be heard.

Notice to respondent previous to remand.

Clause 6th. Any Judge, by whom an order for admitting a Special Appeal shall be made, may certify, that, in his judgment, the decision of the lower Court is manifestly erroneous upon any of the grounds upon which a Special Appeal will lie, and thereupon the appeal may be set down for hearing in a list, to be called the list of certified Special Appeals. All cases entered in such list may be called up in due course for hearing and decision, according to the provisions of this Act, without regard to the general list of Special Appeals pending in the Sudr Court.

Certified special appeals.

Clause 7th. If an application for a Special Appeal be heard by a number of Judges sufficient according to the provisions of this Act to hear and determine the appeal, and it shall appear that the decision is manifestly erroneous, or that the case ought to be remanded, the appeal may be heard and determined forthwith, if the Respondent or Respondents be present or represented by a pleader or pleaders, otherwise the Court may order the case to be entered in the list of certified Appeals, and the same shall be entered accordingly.

Order of rejection should state reasons.

IX. Clause 1st. Every order for rejecting a Special Appeal shall state the reason for disallowing each of the grounds set forth in the petition, and every such order of rejection may be once reviewed by the Judge or Judges by whom the same was passed, or by any Judge or Judges sitting for, or instead of, him or them, if they or he shall think fit to review the same. Provided that no such review shall be allowed, unless application for the same be made within three months from the date of such order.

Clause 2nd. If any such order be rescinded, or if the Judges who shall review the same shall be equally divided in opinion, the Appeal shall be admitted, and the case brought on to the file of the Court, and heard and determined in due course.

Stamp on Petition for review of such order.

Clause 3rd. A Petition for the review of such order shall be written on paper stamped with a Government Stamp of the value of two Rupees a sheet.

Mode of trying admitted appeals.

X. Clause 1st. When any Special Appeal shall be admitted, the same shall be heard and determined by three or more of the Judges of the Sudr Court, and such hearing and determination shall be upon all the grounds whereon a Special Appeal will lie under this Act.

Objection may be amended or added to.

Clause 2nd. The Sudr Court may, at any time before or at the time of the hearing of any special appeal, or any application for a Special Appeal, allow either party to amend the grounds of objection set forth in his petition, or to add further grounds of objection thereto, or to urge, and be heard by himself or his Pleader in support of any objection not included in his petition, upon such terms and conditions as to postponement of the hearing, and as to the payment of costs or otherwise, as the Court shall think just, to prevent the opposite party or his pleader from being taken by surprise or otherwise. Without such leave of the Court, neither party shall be allowed to urge or be heard in support of any objection not set forth in his Petition. But upon hearing the application, or determining the appeal, the Sudr Court shall not be confined to the grounds of objection set forth in the Petition.

Petition should be on stamped paper.

How it should be presented.

1. The Petition of Special Appeal should be written upon the stamped paper prescribed in Section 13, Regulation XIII, 1816, with reference to the value or amount of the suit; and should be presented by the party, either in person or by an

authorized pleader of the Court. In the latter case, the petition should be signed by the Pleader, who should certify on the back of the Petition that he has duly considered the grounds stated for admitting a Special Appeal, and that he believes them to be well founded and sufficient.(w)

Security.

2. If the Court see reason for admitting a Special Appeal on any of the grounds stated in Section 4, Act XVI, 1853, the Special Appellant should be required to furnish the prescribed security* for costs within a period to be fixed by the Court; and upon this requisition being complied with, the Special Appeal should be admitted.(x)

Vide page. [illegible]

3. A Special Appeal was admitted, upon the ground that the Decree of the Appellate Court was inconsistent with the Regulations and with established judicial precedent, inasmuch as it purported to be a decree, on regular appeal, on the merits; whereas no previous decision on the merits had been passed by the lower Court, which merely nonsuited the Plaintiff because the suit had been laid for an amount exceeding that cognizable by the Court.(y)

4. The Sudr Court admitted a Special Appeal on the ground that a material plea, viz. the question of the competency of a Defendant in the original suit to execute the bond on which the Plaintiff based his claim, had been passed over by the Appellate Court without notice, a proceeding which the Sudr Court ruled was contrary to established judicial precedent.(z)

5. In a suit originally instituted by a European, for the recovery of his child by a Hindoo, valued at Rs. 300, and of 500 Rupees as compensation for personal damages, the Court of original jurisdiction adjudged that the child should be restored, but disallowed the 500 Rupees. On appeal to the Provincial Court, the decree was reversed. An application presented to the Sudr Court for the admission of a Special Appeal, in the case, was complied with; the Court considering that a point of general interest and importance, not before decided by it, was involved in the case; viz. whether a claim brought by a European British subject to recover his child from the family of the deceased

(w) Cl. 3, Sec. 4, Reg. XV., 1816.
(x) Cl. 4, Sec. 4, Reg. XV., 1816.
(y) S. U. Pro. 7th July 1835.
(z) S. U. Pro. 19th Oct. 1835.

Hindoo mother of such child, should be determined by Hindoo Law.(a)

6. On an application for the admission of a Special Appeal, the Sudr Court observed that one of the grounds on which the Appellate Court founded its decree was, that, "before the heirs of a man could be declared answerable for a large sum on account of the mere existence (from accident perhaps, or from good faith between the original parties,) of a deed which was satisfiable by sale of the mortgaged property at the date limited for payment, the claimant ought to produce clear and satisfactory proof for a delay of upwards of ten years." The Sudr Court allowed the Special Appeal; regarding it as contrary to judicial precedent to admit, as a ground for dismissing a suit on a bond, that the existence of such bond arose from "accident perhaps, or from good faith between the original parties."(b)

7. The Plaintiffs in a suit to recover the value of a pair of shoes, and the recognition of the right to wear shoes and whitewash their houses, were nonsuited by the original Court. The Provincial Court on appeal affirmed the decree, remarking that the question of mamool, a decision on which, it was considered, was the object of the suit, "must be left to the Gooroos or Punchayets of the antagonist castes." The Sudr Court admitted a Special Appeal in the case, the applicant having taken exception to the above opinion of the Provincial Court; and that part of its decree being viewed by the Court as at variance with Section 5, Regulation II., 1802, and Section 3, and Clause 1, Section 16, Regulation III., 1802.(c)

8. An objection to an adoption brought forward for the first time in the petition of special appeal was held by the Sudr Court to have been made too late, and not to deserve consideration, the fact on which the objection was based having been within the knowledge of the Petitioner when the original suit was instituted.(d)

Period for filing lower Court's Decrees.

9. The authenticated copies of the Decrees which should be filed by a special Appellant, should invariably be exhibited within the period allowed for the presentation of regular Appeals. Failure to do so will involve a rejection of the petition of spe-

(a) S. U. Pro. 5th Dec 1836.
(b) S. U. Pro. 7th March 1838.
(c) S. U. Pro. 24th April 1837.
(d) D. S. U. A No. 5, of 1817.

cial appeal, even though the latter may have been filed within the limitation abovemention.(e)

How Petitions are to be received and transmitted.

10. As soon as possible after the presentation of a Petition of special appeal, the Court to which it is presented should issue a Notice to the Special Respondent, calling upon him to appear before the Court Sudr Adawlut, either in person or by Vakeel, to oppose the prayer of the Petition if he think fit to do so, within six weeks from the date of presentation of the Special Appeal Petition.

Petition may be returned, and amended one received.

11. The Sheristadar or other chief Ministerial Officer of the lower Court should examine the stamps upon which the Petition is engrossed, and if they are correct, he should certify to that effect; but if otherwise, the Petition should be returned to the party in order that he may supply any deficiency in the stamps, previous to the transmission of the same to the Sudr Adawlut. The Sheristadar or other chief Ministerial Officer should likewise enter on the top of the Petition the value in issue therein. The Petition should then be forwarded to the Sudr Court with the following endorsement:

Presented, 1*st September* 1854.

Notice issued to Special Respondent, 2d September 1854.

(Initial of the Judge.) (*)

12. Petitions of Special Appeal irregularly drawn up are to be returned to the parties presenting them. At the same time, when necessary, a limited period (not exceeding 6 days in extension of the time prescribed for presentation of such Petitions) should be granted to enable the party to put in an amended Petition, and the same is to be reported to the Sudr Adawlut in sending up the Petition. This indulgence is to be granted but once in each case. The rule given for acceptance of the primary stamp in returned Plaints and Appeals on amended Plaints and Appeals being put in, is applicable also when amended Special appeals may be received.†

Record.

13. Whenever notice may be given to a Court below of a Special Appeal having been admitted by the Sudr Court, the record of the suit should be forwarded to to the Sudr Court with the least possible delay, a certified copy of the exhibits and other important papers being first made and retained in the lower Court.(f)

How Notice to Respondent should be served in the event of his demise or absence.

14. Whenever the Nazir of the Zillah Court to which notice may have been transmitted for the purpose of being served upon the Special Respondent in a Special Appeal pending before the Sudr Court, may report the death or absence of such Respondent,

(e) S. U. Pro. 17th December 1849.
(*) C. O. 3d October 1854, No. 134. A.
(†) R. P. S. U. Cl. 73.
(f) S. U. Pro. 15th February 1847. Cl. 1, Sec. 3, Act IX, 1855.

the Zillah Judge should at once cause the Notice to be served, if the Respondent be demised, on his heir or heirs; or in the event of his being absent from his ususal place of abode, to be affixed on his dwelling house; reporting the same for the information of the Sudr Court (*g*)

15. Notwithstanding the death of the Respondent, the Sudr Court passed judgment in an Appeal, the subject in dispute not involving a point of law as to who might be the heir of the deceased.(*h*)

16. In another case, upon the Respondent's demise occurring prior to the Appeal being called up for trial, and the right of the party claiming to be the heir being disputed, proceedings were suspended until the question of heirship had been tried and determined.(*i*)

17. A departure from the original pleadings ought not to be permitted to operate to the prejudice of the opposite party.(*j*)

18. The provisions of Acts XXIX, of 1841, XVI, of 1845, and XVII, of 1847, are applicable to Pauper Special Appeals.

Special appeals in *formâ pauperis*,

19. The rules relating to the admission of regular appeals in *formâ pauperis*, are applicable to Pauper Special Appeals.(*k*)

from decisions under Reg. V, 1822,

20. A Special Appeal lies to the Sudr Conrt from a Decree passed by a Zillah or a Subordinate Judge on an appeal preferred from a Revenue Officer's decision under Regulation V., 1822.(*l*)

from order of Sub Judge or P. S. Ameen in executing decree referred by Zillah Judge.

21. A Special Appeal lies to the Sudr Court from an order passed by a Zillah Judge on an Appeal from an order of a Subordinate Judge or Principal Sudr Ameen in executing a Decree referred to him by the Zillah Judge.(*m*)

Decree in Special Appeal.

19. When a remand may not be necessary, the Sudr Court may confirm or reverse in whole, or in part, all Decrees from which they are authorized to receive Special Appeals, and to make such further orders in all such Decrees as justice, equity and good conscience may require, and to award such costs to either party as may be deemed reasonable.(*n*)

20. No decision of a lower Court can however be reversed, altered or remanded, on account of any error, defect or irregularity, not productive of injury to either party.(*o*)

(*g*) C. O. 16th May 1853. No. 128.
(*h*) D. S. U. A. 6 of 1822.
(*i*) Ibid, 7 of 1823.
(*j*) Ibid, 6 of 1824.
(*k*) Sec. 3. Reg. III., 1822.
(*l*) C. O. 23d April 1828.
(*m*) Sec. 14, Act. VII, 1843.
(*n*) Cl. 3, Sec. 9, Reg. V, 1802.
Cl. 3, Sec. 26, Reg. XIV, 1816.
S. U. Pro. 12th February 1844.
(*o*) Act. IX, 1854.

APPEALS.

SECTION IV.

REGULAR APPEAL TO THE SUDR COURT.

1. A regular appeal lies to the Sudr Court from decisions passed in original suits by Zillah Judges.(p)

In what cases regular Appeal lies to Sudr Court.

2 Every petition of regular appeal should be presented to the Court, in which the decision was passed, within six weeks from the day of the decision. Such petitions should, except in cases of petitions presented by persons desirous of being admitted to appeal in *formâ pauperis*, contain only notice that the party, being dissatisfied with the decision, is desirous of appealing from it.(q)

When and where Petition of Appeal should be presented, what it should contain.

3. The Sudr Court may extend the time for presenting the petition of appeal to the Lower Court, upon being satisfied that there is sufficient cause for such extension of time. The application for such extension of time may be made directly to the Sudr Court, or through the intervention of the Lower Court, at the option of the applicant.(r)

Time for presenting Petition may be extended by Sudr Court.

4. The petition of appeal presented to the Lower Court should be written on stamped paper, according to the rates contained in Section 13, Regulation XIII., 1816; and be accompanied by sufficient security for the eventual costs in appeal.(s)

Petition to be on stamped paper, and accompanied by security for costs.

5. An appeal is not admissible (except in the case of a Pauper), if the above security for costs be not tendered. The presenting of the petition within the time limited for appealing, but without such security, does not preserve to the Appellant his right of appeal as far as respects that limitation.(t)

Appeal not admissible without security.

6. With reference to the restrictions contained in the above para, the Sudr Court ruled,

That it is not competent to a Lower Court to admit, or receive and forward, an appeal to the Sudr Court, at any period,

(p) Cl. 1, Sec. 5, Reg. V., 1802. Sec. 9, Act VII., 1843.
(q) Cl. 1, Sec. 1, Act IX., 1855.
(r) Cl. 2, Sec. 1, Act IX, 1855.
(s) Cl. 6, Sec. 8, Reg. XV, 1816. Cl. 7, Sec. 10, Reg. V, 1802.
(t) Ibid.

or under any circumstances, except in cases of Paupers, unless accompanied by competent security for costs.

That a Lower Court cannot, at any period, reject an appeal given in with such security, excepting upon the grounds of its containing improper or disrespectful language, or because of some manifest irregularity.

That when an appeal has been presented to a Lower Court, within the prescribed period, accompanied by security for costs, and that security should prove insufficient or unavailable, the appeal must be rejected, and the party left to apply to the Sudr Court.

That in case of an appeal after the limited period with adequate security for costs, the Lower Court should require the party to shew cause for the delay, and submit the proceedings to the Sudr Court for orders.(u)

Execution of Decree appealed from may be suspended.

7. In all cases of regular appeal, the Court in which the decree appealed from may have been passed, should suspend the execution of it during the appeal, provided the party against whom the decree may have been passed should, at the time of preferring his appeal, or within such reasonable period afterwards as may be fixed for the purpose, deliver good and sufficient security for the performance of the Decree which may be passed on the appeal.(v)

Notice and Proclamation by lower Court.

8. Upon a petition of regular appeal being duly presented to the Court in which the decision was passed, notice thereof to the Respondent, as well as a Proclamation to the same effect should immediately issue from that Court, and a copy of the Proclamation be forthwith fixed up in some conspicuous part of the Court house of such Court. If the Notice cannot be personally served, the Proclamation should at once be fixed upon the door of the Respondent's dwelling-house, or in some conspicuous place in the village or place where he usually resides; or in cases in which the Respondent may not have a fixed residence within the jurisdiction of the Company's Courts, the Proclamation may be fixed upon the door of his house of business or cutcherry, and the Notice may be served on his known local agent. In case the Proclamation cannot be fixed or the Notice served in the manner above mentioned the Proclamation should be fixed up in such other place, if any, as the last mentioned Court may direct. The Nazir should make a return to

(u) C. O. 5th March 1859, No. 27. | (v) Cl. 6, Sec. 10, Reg. V., 1802.

the Court, stating when and where the notice and proclamation have been served or fixed up. The return of the Nazir should be filed in Court, and form part of the record of the case, and such return should be published by fixing up the same in some conspicuous part of the Court house of the lower Court.(w)

Copies of what original papers should be kept in lower Court.

9. The record of an appealed case to be copied, authenticated, and deposited in the lower Court should consist of only the exhibits in the case, together with any other papers of importance, including the pleadings or any parts of them, which either of the parties may require to be copied, authenticated and deposited in the lower Court, previously to their being transmitted to the Sudr Court.(x)

Party requiring any papers to be copied should give notice to lower Court.

10. If either of the parties require any papers to be copied, authenticated and deposited, such party should, either by himself, or his pleader or authorized agent, give notice in writing to the lower Court, before the expiration of fourteen days from the time of the publication of the return of the Nazir as aforesaid. Such notice should specify the papers which the party requires to be copied, authenticated and deposited.(y)

Party may give notice of papers to be copied in anticipation of Appeal.

11. Either party may, by himself, or his pleader or authorized agent, before the presentation of an appeal, give notice in writing to the lower Court specifying any papers or documents which he requires to be copied, authenticated and deposited, in the event of an appeal being preferred.(z)

Petition and record to be certified to Sudr Court.
Proviso.

12. The petition of appeal, together with the record of the lower Court, should be certified to the Sudr Court as soon as convenient after the presentation of the petition, provided that the same should not be certified within the time allowed to the parties for specifying the papers they desire to be copied, authenticated and deposited.(a)

Notice to Appellant to file objections.

13. On arrival of the appeal record at the Sudr Court, notice should be affixed in the Court House of that Court, requiring the Appellant to file, within six weeks from the date thereof, his grounds of objection to the decision of the Court below. Within the said space of six weeks, the Appellant should file in the Sudr Court his grounds of objection to the decision (b)

(w) Sec. 2, Act IX., 1855.
(x) Cl. 1, Sec. 3, Act IX., 1855.
(y) Cl. 2, Sec. 3, Act IX., 1855.
(z) Cl. 3, Sec. 3, Act IX., 1855.
(a) Sec. 4, Act. IX., 1855.
(b) Sec. 5, Act. IX., 1855.

Notice to Respondent to file objections.

14. On the filing of the grounds of objection by the Appellant, notice should be affixed in the Court House of the Sudr Court, requiring the Respondent to file his grounds of objection, if any, to the appeal, or to the decision of the lower Court, within four weeks from the date of such notice.(c)

When Respondent should file objections.

15. Within the said space of four weeks, the Respondent should file any grounds of objection which he has to the appeal, or which relate to such parts of the decision as are involved in the appeal.(d)

In what case Respondent may file separate Petition of Appeal.

16. If the Respondent should desire to object to any part of the decision of the lower Court not involved in the appeal, he may present a separate Petition of Appeal to the Sudr Court, within the said space of four weeks, or within such further time as the Sudr Court may allow for that purpose.(e)

Grounds of objection should be filed with such separate Petition.

17. The Respondent should, in such case, file, with his petition of appeal, his grounds of objection to that part of the decision to which his appeal relates; otherwise his appeal should not be received.(f)

When the Record should be deemed complete.

18. At the expiration of the time allowed to the Respondent for filing his grounds of objection, and for filing a separate petition of Appeal in the Sudr Court, the record should be deemed complete, and the case ready to be called up for decision on any day which the Sudr Court may notify, unless the Respondent, within such time, file a separate petition of appeal in the Sudr Court.(g)

Notice of separate Petition of Appeal should be given.

19. If the Respondent file separate petition of appeal in the Sudr Court, notice should be fixed up in the Court House of the Sudr Court, to the effect that the Respondent has filed such separate appeal; and the notice should require the Appellant to file any grounds of objection which he may have thereto, within the space of four weeks from the date of the notice.(h)

When Appellant should file objections to Respondent's separate Petition. Completion of Records.

20. Within such space of four weeks the Appellant may file any grounds of objection which he has to such appeal, or which relate to that part of the decision which is involved in the Respondent's appeal. At the expiration of the time allowed for filing such grounds of objection by the Appellant, the

(c) Cl. 1, Sec. 6, Act IX., 1855.
(d) Cl. 2, Sec. 6, Act IX., 1855.
(e) Cl. 3, Sec. 6, Act IX., 1855.
(f) Cl. 4, Sec. 6, Act IX., 1855.
(g) Cl. 1, Sec. 7, Act IX., 1855.
(h) Cl. 2, Sec. 7, Act IX., 1855.

record should be deemed complete, and the case ready to be called up for decision on any day which the Sudr Court may notify for that purpose.(*i*)

21. If the appeal of either party be dismissed or withdrawn, the appeal of the other may be heard alone; otherwise the two appeals, and the proceedings thereon, should form one record, unless the Sudr Court should otherwise order.(*j*)

When Respondent cannot file separate Petition of appeal.

22. The Respondent should not be allowed to present a separate petition of Appeal in the Sudr Court, if he have previously presented a petition of appeal to the lower Court.(*k*)

Objections should be distinctly stated and numbered, and should be written on stamped paper.

23. All grounds of objection which may be filed by either the Appellant or the Respondent, should be stated distinctly and concisely, without any argument or narrative of facts, and should be numbered consecutively; and, except in the cases hereinafter mentioned, be on paper bearing the stamp duty prescribed by Section 19, Regulation XIII., 1816.(*l*)

Time for filing objections may be extended.

24. The Sudr Court may extend the time for filing grounds of objection, either by an Appellant or Respondent, upon special application for that purpose, and upon sufficient reasons being shown, to the satisfaction of the Court, for such extension of time. In such case, the objections may be filed within such extended time.(*m*)

By leave of Court, objections may be amended or added to.

25. Either party may, by leave of the Sudr Court, or any Judge thereof, at any time before the hearing, amend his grounds of objection, or add grounds of objection to those filed, upon such terms and conditions, and within such time as the Court or Judge may order. The Court may also, upon the hearing of any appeal, allow either party to amend his grounds of objection, or to add further grounds, or to urge, and be heard by himself or his pleader, in support of any objection not included in his grounds of objection, upon such terms and conditions as to postponement of the cause, and as to the payment of costs or otherwise, as the Court may think just, to prevent the opposite party or his pleader from being taken by surprise, or otherwise. Without such leave of the Court, neither party should be allowed to urge, or to be heard in support of, any objection not included in his grounds of objection filed. But the Court should not be confined to such grounds of objection in deciding the cause.(*n*)

(*i*) Cl. 3, Sec. 7, Act. IX., 1855.
(*j*) Cl. 4, Sec. 7, Act IX., 1855.
(*k*) Sec. 8, Act. IX., 1855.
(*l*) Cl. 1, Sec. 9, Act. IX., 1855.
(*m*) Cl. 2, Sec. 9, Act. IX., 1855.
(*n*) Sec. 10, Act IX., 1855.

Objections may be heard and determined previous to hearing Appeal.

26. The Sudr Court may call up for hearing and decision on any day the Court may notify, and without regard to the place in which the case stands in the general list of appeals, any grounds of objection filed by the Respondent or the Appellant, to the appeal of the opposite party; and the Sudr Court may hear and decide upon such grounds of objection, before calling the case up for decision upon the grounds of objection to the decision of the lower Court.(o)

Appeal involving objections of law only, may be tried without regard to order of file.

27. If the grounds of objection filed by the Appellant and Respondent be upon points of law only, and not raise any question of fact, the Sudr Court may order the case to be called up for hearing and decision on any day which the Court may notify, without regard to the place in which it stands in the general list of appeals pending in the Court.(p)

How Appeal involving questions of law and fact should be tried.

28. If the grounds of objection filed raise questions of law and fact, and it appear to the Sudr Court that the decision of the law may render it unnecessary to determine any question of fact so raised, the Court may order the case to be called up for decision upon the law alone in the first instance, and if the decision of the case upon the law should render it unnecessary to determine any question of fact, the Court should pass a final decision in the case; otherwise the Court should determine the law only, and the case should be afterwards set down in the list of regular appeals for hearing upon the question or questions of fact, and be determined in the same manner as any other regular appeal.(q)

Questions of usage should be decided.

29. The Court will decide all questions of usage as well as of law which may be involved in an appeal before it.(r)

30. A departure from the original pleadings, ought not to be permitted to operate to the prejudice of the opposite party.(s)

Sudr Court may take new evidence, or remand suit to lower Court.

31. The Sudr Court is empowered in cases of Appeal in which it may appear to it that the original suit had not been sufficiently investigated in the lower Court, or for any other cause that may be deemed reasonable by it, either to receive such further evidence as it may think necessary for the just determination of the suit, and give judgment upon it; or to

(o) Cl. 1, Sec. 11, Act IX., 1855.
(p) Cl. 2, Sec. 11, Act IX., 1855.
(q) Cl. 3, Sec. 11, Act IX., 1855.
(r) D. S. U. A. No. 7, of 1837.
(s) D. S. U. A. No. 6, of 1824.

refer the suit back to the lower Court in which it originated, accompanied by such special directions with regard to the new evidence that should be received respecting it, as may be deemed by the Sudr Court most conducive to justice and the convenience of the parties and witnesses. But in every case in which the Sudr Court may exercise this power, it should enter upon the record of the trial its reasons for having exercised it. In cases in which the Sudr Court may judge it proper to receive such further evidence itself, it is authorized, according as it may deem most conducive to justice, (respect being had to the nature of the cause and the evidence,) either to examine the witnesses to be produced, *viva voce*, in open Court, first causing them to be sworn or solemnly affirmed, and their depositions to be reduced into writing, and signed by the deponents respectively; or to authorize the Register of the Court to swear the witnesses and take their depositions, and to cause the deponents to authenticate them with their signatures. The witnesses in such case should be examined by the Register in the presence of both parties or their vakeels, who may put any questions to them that they may think proper. But if due notice be given to the parties or their vakeels, of the examination of any witnesses before the Register, and they do not attend at the time of the examination, the Register should proceed with the examination, and the depositions should be received as good and authentic evidence.*(t)*

32. The Sudr Court finding the evidence insufficient in an appeal tried before it, recorded fresh points, and issued orders to the lower Court to take evidence thereon; and upon the same being received, passed judgment on the appeal.(*u*)

33. No decision of a lower Court can be reversed, altered or remanded on account of any error, defect or irregularity, not productive of injury to either party.(*v*)

Punishment for litigious Appeals.

34. It is competent to the Sudr Court to punish appeals which may appear to be litigious, by a fine to Government proportionate to the condition of the party and the circumstances of the case.(*w*)

Power of single Judge to try Appeal.

He can confirm lower Court's decision.

35. It is competent to a single Judge of the Sudr Court to sit on the trial of a regular appeal, and should he be of opinion that no sufficient ground has been shown to impugn the cor-

(*t*) Sec. 16, Reg. V., 1802.
(*u*) D. S. U. A. No. 13, of 1817.
(*v*) Act IX., 1854.
(*w*) Sec. 12, Reg. V., 1802.

rectness or justness of the decision appealed from, he may, without reference to the order of the file, confirm the same, without requiring the attendance of the opposite party, and with or without a revision of the whole proceedings, as the nature of the case may appear to require; the order of confirmation being communicated through the Court from whose judgment the appeal was made to the opposite party, in order to enable him to take immediate measures for the execution of the decree.(x)

Or remand the case.

36. On the other hand, should the Judge be of opinion that the decision appealed against, ought to be altered or reversed, as being manifestly unjust, or at variance with some regulation in force, or in opposition to the Hindoo or Mahomedan Law, or other Law applicable to the case, or as having been passed without sufficient investigation of the merits, or as grounded on an assumption obviously erroneous, or irrelevant, with reference to the points at issue, it is likewise competent to such single Judge to issue an injunction pointing out the irregularity, illegality, or other defect apparent in the proceedings or the decision appealed against, and requiring the Lower Court to revise the case, and proceed therein in such manner as may be conformable to justice and the regulations.(y)

He may call for lower Court's proceedings.

37. A single Judge trying an appeal may exercise his discretion in calling for the proceedings of the Lower Court or such parts of them as may appear necessary, and may further order a report in English, or in the vernacular language commonly used in the Court, as the occasion may render advisable, on any points requiring explanation, prior to passing a determination on the appeal.(z)

And can direct execution of lower Court's judgment to be suspended.

38. It is further competent to a single Judge to direct that the execution of any judgment passed by a Lower Court in all cases in which that measure may appear to him expedient, may be stayed, until a final decision has been passed thereon.(a)

But a single Judge cannot reverse or alter a Decree.

39. A single Judge however cannot reverse, or alter any decision passed by one or more Judges of the Sudr Court, nor a decision passed by a Lower Court.(b)

(x) Cl. 2, Sec. 10, Act VII., 1843.
(y) Ibid.
(z) Cl. 3, Sec. 10, Act VII., 1843.
(a) Cl. 4, Sec. 10, Act VII., 1843.
(b) Cl. 2 and 3, Sec. 4, Reg. VIII., 1831.

40. A Judge of the Sudr Court cannot sit on the trial of any appeal in a cause tried before himself as a Zillah Judge, nor can he sign the Decree passed upon such appeal by the Sudr Court.(c)

When a Judge cannot sit on trial of an Appeal.

41. A Judge cannot either sit on the trial of any cause in which he may be directly or indirectly a party, or may be otherwise personally interested; nor sign the Decree passed in such cause by the Sudr Court.(d)

Further restriction.

42. The provisions of Acts XXIX, 1841, XVI, 1845, and XVII, 1847 are applicable to regular appeals to the Sudr Court.

43. When an appeal petition presented, in the first instance, to a Lower Court, may be rejected, a copy of the order of rejection should be furnished to the party on the following Court day, or as soon afterwards as practicable, and such party will be at liberty to present his petition of appeal to the Sudr Court. This latter petition should set forth the previous application made to the Lower Court, and its rejection by that Court, and be accompanied by a copy of the order of rejection, or by a declaration that such copy was applied for ten days after the order was passed, and not obtained.(h)

Rejection of Appeal Petition by lower Court does not preclude presentation of Petition of appeal to Sudr Court.

44. An order of the Sudr Court refusing to sanction a review of Judgment when applied for by a lower Court, does not bar the institution of a regular appeal to the Sudr Court, (provided the case be appealable,) subject to the conditions and rules prescribed for the admission of regular appeals.(i)

Refusals by Sudr Court to sanction a review of Judgment by lower Court, does not bar institution of regular Appeal.

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45. If any party to a regular suit be desirous of being admitted to appeal in *formâ pauperis* to the Sudr Court, the following procedure should be adopted.

PAUPER APPEALS.

46. The Appellant should present his petition to the lower Court according to the rules prescribed by paras. 2 and 3; but a petition to appeal in *formâ pauperis* against any decision passed before Act. IX., 1855 came into operation, may be presented within three months from the day of the decision.(j)

When Petition should be presented.

(c) Cl. 1, Sec. 2, Reg. III., 1825.
(d) Cl. 1, Sec. 3, Reg. I., 1829.
(h) Cl. 11, Sec. 10, Reg. V., 1802.
(i) Cl. 4, Sec. 6, Reg. XV., 1816.
(j) Cl. 1, Sec. 12, Act IX., 1855.

Form of Petition.

47. Petitions of appeal by parties desirous to appeal in *formâ pauperis* should contain a statement to that effect, and also a Schedule of the whole real and personal property belonging to the Petitioner, and the estimated value of such property, and should be written on paper bearing the stamp duty of two rupees per sheet.(*k*)

Notice and Proclamation.

48. Upon the presentation of such petition, the Notice to the Respondent and the Proclamation should state that the Appellant desires to appeal in *formâ pauperis*.(*l*)

Procedure in Pauper Appeals.

49. On arrival of the appeal record at the Sudr Court, the same procedure should be adopted in that Court as in other cases of regular appeal, except that, after the filing of the grounds of objection by the Appellant, and before notice be given requiring the Respondent to file his grounds of objection, the Sudr Court should determine, according to the rules applicable to such cases, whether or not the Appellant should be allowed to appeal in *forma pauperis*.(*m*)

Notice to Respondent to file objections.

50. If the Sudr Court allow the Petitioner to appeal in *forma pauperis*, notice should be given to the Respondent to file his grounds of objection in the manner mentioned in paras. 14 to 17, and the same procedure should be adopted subsequently thereto, as in other cases of regular appeal to the Sudr Court.(*n*)

What order may be made upon refusal to allow Appeal in *formâ pauperis*.

51. If the Sudr Court refuse to allow the petitioner to appeal in *forma pauperis*, the Court may make an order to the effect that the Appellant, upon filing a petition of appeal in that Court upon paper bearing the stamp duty prescribed by Section 13, and Clause 2, Section 23, Regulation XIII., 1816, and upon re-filing his grounds of objection on paper bearing the stamp duty prescribed by Section 19, and Clause 2, Section 23, of the same Regulation, may proceed with the appeal according to the rules prescribed in the case of persons appealing as Paupers.(*o*)

How Appellant should proceed upon such order.

52. Upon such order being made, the Appellant should file his petition, and re-file his objections upon the stamped paper specified in the preceding para, within two weeks from the date

(*k*) Cl. 2, Sec. 12, Act IX., 1855.
(*l*) Cl. 3, ibid.
(*m*) Cl. 4, ibid.
(*n*) Cl. 5, ibid.
(*o*) Cl. 6, ibid.

date of such order, or within such further time as the Court may allow for that purpose, otherwise the appeal should stand dismissed.(*p*)

Notice of order should be given to Respondent.

53. Upon the re-filing of the grounds of objection according to the provisions of the preceding para, notice of the order and of the re-filing of such objections should be given to the Respondent in the manner stated in para. 14, and the Respondent should be required to file his grounds of objection, if any, according to the provisions of that and the subsequent three paras. The procedure subsequent to such notice should be according the general provisions of Act IX, of 1855 (*q*)

Subsequent procedure.

Appellant's objections may be on plain paper.

24. If an Appellant should petition to appeal in *formâ pauperis*, his grounds of objection may be written on plain paper.(*r*)

as well as subsequent objections.

57. If an Appellant should be admitted to appeal, or a Respondent to defend, in *formâ pauperis*, all grounds of objection subsequently filed by either party may be written on plain paper.(*s*)

(*p*) Cl. 7. Sec. 12, Act. IX., 1855.
(*q*) Cl. 8, Ibid.
(*r*) Cl. 9, Sec. 12, Ibid.
(*s*) Sec. 13, Ibid.

APPEALS.

SECTION V.

SUMMARY APPEAL TO THE SUDR COURT.

In what cases Summary Appeal lies to Sudr Court.

1. A Summary Appeal lies to the Sudr Court from decisions and orders of the Zillah Courts, refusing to admit an original, suit or an appeal, regularly cognizable by them; or having admitted a suit or appeal, may have dismissed it without an investigation of the merits.(t)

A Defendant cannot appeal.

2. It is not open to a Defendant to prefer a Summary Appeal.(u)

Period limited for appealing.

3. A Summary Appeal to the Sudr Court should be preferred within the same limited period as is prescribed for Summary Appeals to the Zillah Courts.(v)

How Appeal should be preferred.

4. The Petition of appeal should be presented by the Petitioner in person or by an authorized Vakeel, being written on stamped paper of the value prescribed for Miscellaneous Petitions, and accompanied by an attested copy of the order or Decree objected to.(w)

No Institution stamp required.

5. The Petitioner is not however liable to the payment of the stamp duty substituted for the institution fee by Section 13, Regulation XIII of 1816; nor can he be required to furnish any security, except such as may be eventually necessary for staying the execution of the Decree from which the appeal may be preferred.(x)

In what case security will be requisite

Proceedings on appeal.

6. No notice need be given to the Respondent, nor may his attendance be required, on a summary appeal being preferred, unless, in any particular instance, the Court may deem it proper to adopt that measure; nor should any pleadings or proceedings be held on such summary appeal, excepting such as may suffice to determine whether the suit was or was not rejected or dismissed by the lower Court on sufficient grounds, and in conformity with the Regulations.(y)

(t) Cl. 2, Sec. 5, Reg. XV., 1816. Sec. 9, Act VII., 1843.
(u) S. U. Pro. 1st January, 1850.
(v) Cl. 5, Sec. 5, Reg. XV., 1816. Cl. 1. Sec, 8, Act VII., 1843.
(w) Cl. 6, Sec. 5, Reg. XV., 1816.
(x) Cl. 7, Sec 5, Ibid.
(y) Cl. 8, Sec. 5, Ibid.

7. If, upon such summary proceedings, it should appear to the Court that the suit or appeal was rejected in the first instance, or, after having been admitted, was dismissed, without an investigation of the merits, upon insufficient grounds, or in opposition to the Regulations, it is competent to the Sudr Court to issue a Precept to the lower Court or officer, from whose order or decree the petition of Appeal may have been presented, requiring that the original suit or appeal be again admitted on the file, and a decision passed upon it after mature consideration of its merits.(z)

A single Judge may try Appeal.

8. A single Judge of the Sudr Court may hear and determine summary appeals, subject to the same rules and restrictions as are prescribed, for the trial of regular appeals by a single Judge.

Punishment for litigious appeals.

9. If a summary appeal preferred to the Sudr Court be found to be groundless or litigious, the Court is authorized and required to reject the petition, and to impose such fine on the litigious Appellant as may appear proportionable to the condition of the party and to the circumstances of the case; but such fine should not in any case exceed the amount of the stamp duty which would have been payable by the Appellant on the institution of such case as a regular suit or appeal. All orders of the above nature are final and conclusive.(a)

Order dismissing a suit under Act XXIX. 1841.

10. Where a suit or appeal may have been dismissed by a Court under Act XXIX., 1841, on the ground that the Plaintiff or Appellant had made default by neglecting to proceed in it for six weeks, no appeal can lie against the order of dismission, other than a summary appeal on the fact of default.(b)

Summary appeal cannot be instituted in *forma pauperis*.

11. A summary appeal cannot be instituted in *formâ pauperis*,(c) nor can an appeal lie from the order of a Court admitting or disallowing a party to sue as a Pauper.(d)

No appeal preferrible from Zillah Judge's decision upon objections raised to valuation of suit.

12. An appeal does not lie from the determination of a Zillah Judge upon objections raised by a Defendant to the valuation of a suit instituted in a Lower Court, or before the Zillah Court.(e)

When summary appeal may be admitted in matters of Treasure Trove.

13. The decision of a Zillah Judge on a summary appeal from the decree of a Lower Court in matters of Treasure Trove is final; unless the Sudr Court should in the face of the decision, or on inspection of any documents exhibited with it, see just and

(z) Cl. 9, Sec. 5, Reg. XV., 1816.
(a) Cl. 10, Sec. 5, Reg. XV., 1816.
(b) Sec. 3, Act XXIX., 1841.
(c) Sec. 13, Reg. VII, 1819.
(d) Cl. 4, Sec. 5, Reg. IV., 1825.
(e) Cl. 1, Sec. 4, Reg. XII., 1809.
Cl. 1, Sec. 5, Reg. XII., 1809.

sufficient ground for admitting a second summary appeal to that Court, in which case only such further appeal may be admitted and proceeded upon under the general rules in force for summary appeals.(f)

Interlocutory orders appealable.

14. A summary appeal lies to the Sudr Court from appealable interlocutory orders passed by a lower Court.(g)

15. The restrictions relative to the period of admission of regular appeals apply to appeals from interlocutory orders; and in cases in which petitions may be presented praying for the consideration of an interlocutory order, the period which may elapse between the presentation and disposal of such petitions can alone be added to the ordinary term of appeal.(h)

Notice given of Petition being presented and of probable date of hearing.

16. Upon a miscellaneous petition of appeal from an interlocutory order of a lower Court being presented to the Sudr Court, a notice of such petition having been presented, with an intimation of the probable date upon which it will be taken up for disposal, should be issued by the Register, to the Judge of the Zillah to whose jurisdiction the parties may be amenable, for the purpose of being posted, with a translation in the vernacular language of the district, in the Court, by which the order appealed from may have been passed; thereby affording the parties an opportunity of being present, either in person or by vakeel, at the hearing of the appeal, or of presenting a counter petition in support of the order appealed from.(i)

How appeals should be preferred by ministerial servants dismissed or suspended.

17. A ministerial servant of a Zillah Court desiring to appeal to the Sudr Court from an order issued for his dismissal or suspension by the officer presiding over the Zillah Court, as well as a ministerial servant of an inferior Court desiring to appeal from an order of the Zillah Judge confirming the order for his dismissal or suspension, may present his petition of appeal to the Zillah Judge, who should at once forward the same to the Sudr Court, with an endorsement showing the date of presentation and of despatch, and with a copy of the order appealed from; and if the petition be written in one of the native languages, with an English translation of the same.

18. The order passed upon the petition by the Sudr Court will be forwarded to the Zillah Judge for communication to the

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(f) Sec. 10, Reg. XI., 1832.
(g) C. O. 23rd February 1831.
(h) C. O. 8th November 1850, No. 118, E.
(i) S. U. Pro. 1st October 1853.

Petitioner, who, if he desire to present any further petition to the Higher Court for a reconsideration of the orders passed by it, should do so either in person or by an authorized Vakeel.(*j*)

Translated Petitions will receive priority of disposal.

19. All miscellaneous petitions, motions and applications presented to the Sudr Court, which may be accompanied with a correct English translation, will be taken up and disposed of, before petitions and applications not so accompanied.(*k*)

Decree from which regular or summary appeal lies cannot be quashed upon miscellaneous petition.

20. It is not competent to any Court, upon a miscellaneous petition, to quash a decree from which a regular or summary appeal lies; but in cases where no appeal lies, if, on presentation of a miscellaneous petition, or by any other regular means, it should appear that a decree has been passed plainly contrary to the Regulations, the case should be reported for the orders of the Sudr Court.(*l*)

Sudr Court may receive Petitions respecting appeals or matters before the Zillah Court;

21. The Sudr Court is empowered to receive any petitions respecting appeals or matters that may be depending, or have been decided, in any Zillah Court; and if it be proved to its satisfaction, that the petition was presented to the Zillah Judge, and that he refused, or omitted, to receive it, the Sudr Court may issue a precept commanding the Judge to receive the petition and to proceed respecting it according to the Regulations.(*m*)

Also Petitions respecting suits or matters before a Sub Judge or P. S. Ameen.

22. The Sudr Court has authority to receive any petitions respecting suits or matters that may be depending, or have been decided, in the Court of a Subordinate Judge or Principal Sudr Ameen; and if it be satisfactorily proved that the petition was presented to the lower Court, and that it refused, or omitted, to receive it, and that the party had ineffectually complained to the Zillah Court, the Sudr Court may issue a precept commanding such Subordinate Judge or Principal Sudr Ameen to receive the petition, and to proceed respecting it according to the Regulations.(*n*)

(*j*) S. U. Pro. 21st April 1853.
(*k*) S. U. Pro. 30th June 1847.
(*l*) C. O. 8th February 1841, No. 76.
(*m*) Cl. 2, Sec. 5, Reg. V., 1802.
(*n*) Cl. 2, Sec. 4, Reg. V., 1802.

APPEALS.

SECTION VI.

APPEALS TO THE QUEEN IN COUNCIL.

In what cases an appeal lies to Queen in Council.

1. An appeal may be preferred to Her Majesty the Queen in Council from a judgment or decree passed by the Sudr Court in a suit wherein the value of the matter in dispute may amount to, or exceed Company's Rupees 10,000.(*o*)

Conditions of admission.

2. No appeal can be admitted unless the Appellant presents his petition of appeal to the Sudr Court, either in person or by an authorized Vakeel of the Court, within six calendar months from the date of the judgment or decree appealed from, and unless the value of the matter in dispute amounts to Company's Rupees 10,000 at least.(*p*)

What the Sudr Court should certify when admitting an appeal.

Reservation of Royal prerogative in respect to admission of appeals.

3. In all cases in which the Sudr Court may admit an appeal to the Queen in Council, it should specially certify on the Proceedings that the value of the matter in dispute in such appeal amounts to 10,000 Company's Rupees or upwards, which Certificate will be conclusive of the fact and not be liable to be questioned on such appeal, by any party to the suit. Her Majesty, her heirs and successors in Council have however the undoubted power and authority, upon the petition of any party aggrieved by a judgment or decree of the Sudr Court, to admit an appeal therefrom upon such terms, and subject to such limitations, restrictions and regulations, as they may, in any such special case, think fit to prescribe.(*q*)

Petition may be filed without copy of decree.

4. The Appellant is at liberty to present his petition of appeal to the Sudr Court without an authenticated copy of the decree appealed from.(*r*)

Judgment appealed from may be executed or not, at discretion of Sudr Court.

5. The Sudr Court may either order the judgment passed by it to be carried into execution, taking sufficient security from the party in whose favor the same may be passed, for the due

(*o*) R. P. C. 18th April 1838.

(*p*) Sec. 3, Reg. VIII., 1818.
R. P. C. 18th April 1838.

(*q*) Ibid.

(*r*) Cl. 6, Sec. 8, Reg. XV., 1816.

performance of such order or decree as Her Majesty, her heirs or successors in Council may think fit to make on the appeal; or suspend the execution of its judgment during the appeal, taking the like security in the latter case from the party left in possession of the property adjudged against him; but in all cases, security should be given by the Appellants, to the satisfaction of the Sudr Court, for the payment of all such costs as the Court may think likely to be incurred by the appeal. After such security has been furnished, and a sufficient sum deposited by the Appellant for covering the expense of preparing a transcript of the Record of the appeal, such deposit being made within the time limited for furnishing the above security for appeal costs, the Sudr Court should declare the appeal admitted and give notice thereof to the Appellant and Respondent respectively, that they may take measures, the one to prosecute, the other to defend, the cause in appeal before Her Majesty in her Privy Council.(s)

Security for costs should be given, and a deposit made for covering expense of preparing transcript of record, preliminary to admission of appeal.

6. The Register of the Sudr Court should by order of the Court send by post, with all possible despatch, one certified copy of the transcript record in the cause to the Register of Her Majesty's Privy Council, Whitehall; and such transcript will be registered in the Privy Council office, with the date of its arrival, the names of the parties and the date of the judgment appealed from. The transcript should be accompanied by a correct and complete Index of all the papers, documents and exhibits in the cause, but the Register of the Sudr Court should omit from such transcript all merely formal documents, such omission being stated and certified in the Index abovementioned,(t) If the original documents in the cause be in any of the country languages, English translations of the same should be made and embodied in the Record transmitted. Especial care should be taken not to allow any document to be set forth more than once in such transcript record, and no other certified copies of the record should be transmitted to agents in England by or on behalf of the parties in the suit. The fees and expenses incurred and paid for the preparation of such transcript should be stated and certified upon it by the Register.

Transcript to be sent to Privy Council.

Vernacular documents to be translated.

7. In case the judgment appealed from may have been passed in pursuance of some local regulation or regulations enacted by

Copies of any local regulations under which the

(s) Sec. 4, Reg. VIII., 1818. Sec. 2, Act. II., 1844.

(t) R. P. C. 13th June 1853.

judgment may have been passed, or which may be referred to, should accompany transcript.

the Governor in Council, or in case any such regulation have been referred to in the judgments passed by any of the Courts wherein the cause had been tried and decided, a copy of such regulation or regulations, or an extract therefrom containing all that has reference to the matter at issue, should be annexed to the transcript record.(*u*)

Appellant or Respondent may be furnished with copy of transcript on paying for the same.

8. The Register of the Sudr Court should also, on the application of the Appellant or Respondent, furnish him or them with one or more copies of the transcript record of the cause appealed, upon payment being made of the expense of preparing such copy or copies.(*v*)

No stamps necessary.

9. No stamp duty or institution fee is payable by the Appellant in respect of any proceeding in an appeal, or in respect of any paper or copy of any paper necessary for an appeal to Her Majesty in Council.(*w*)

If transcript be printed in India, attested copies should be sent to Privy Council.

10. Should the record of proceedings or evidence in a cause appealed have been printed or partly printed, the Register or other proper officer of the Sudr Court is bound to send home the same in a printed form either wholly, or so far as it may have been printed, certifying the same to be correct, on two copies, by signing his name on every printed sheet, and by affixing the seal of the Court to the copies, with the sanction of the Court.(*x*)

11. In all cases in which the parties in appeal may think fit to have the proceedings printed in India, they are at liberty to do so, provided they cause fifty copies of the same to be printed in folio, and transmitted at their expense to the Registrar of the Privy Council, two of which printed copies should be certified as above by a proper Officer of the Sudr Court; and in this case, no further expense for copying or printing the record, will be incurred or allowed in England.(*y*)

Transcript may be printed in England.

12. On the arrival of a written transcript of appeal at the Privy Council office, Whitehall, the Appellant, or his agent, may call on the Registrar of the Privy Council to cause it, or such part of it as may be necessary for the hearing of the case, and

(*u*) Sec. 4, Reg. VIII., 1818.
(*v*) Sec. 5, Reg. VIII., 1818.
(*w*) Act. XI., 1839.
(*x*) R. P. C. 13th June 1853.
(*y*) Ibid.

likewise all such parts as the Respondent or his agent may require to be printed by Her Majesty's Printer, or by any other Printer on the same terms; the Appellant or his agent engaging to pay the cost of preparing a copy for the Printer at a rate not exceeding one shilling per brief sheet, and likewise the cost of printing such record or appendix. One hundred copies should be struck off, of which thirty copies should be delivered to the agents on each side, and forty kept for the use of the Judicial Committee. No other fees for Solicitor's copies of the transcript, or for drawing the joint appendix will be allowed, the Solicitors on both sides being allowed to have access to the original papers at the Council Office, and to extract or cause to be extracted and copied such parts thereof as may be necessary for the preparation of the petition of appeal, at the stationer's charge, not exceeding one shilling per brief sheet.(z)

Time limited for proceeding with appeal. Penalty for default.

13. The Appellant or his agent should make application for the printing of the transcript within a period of six calendar months, fixed for the purpose, and in default of the Appellant or his agent taking effectual steps for the prosecution of the appeal within such fixed period, the appeal will stand dismissed without further order, a report of the dismissal being made to the Judicial Committee by the Registrar of the Privy Council at their Lordships' next sitting.(a)

Hearing of appeal.

14. Whenever it may be found that the decision of a matter in appeal is likely to turn exclusively on a question of law, the agents of the parties, with the sanction of the Registrar of the Privy Council, may submit such question of law to the Lords of the Judicial Committee in the form of a special case, and print such parts only of the transcript as may be necessary for the discussion of the same; provided that nothing in the above provisions shall in any way bar or prevent the Lords of the Judicial Committee from ordering the full discussion of the whole case, if they shall so think fit; and in order to promote such arrangements and simplification of the matter in dispute, the Registrar of the Privy Council may call the agents of the parties before him, and having heard them, and examined the transcript, may submit a report to the Committee as to the nature of the proceedings.(b)

(z) R. P. C. 13th June 1853.
(a) Ibid.
(b) Ibid.

ARBITRATION.

What suits may be referred to arbitration.

1. In suits concerning disputed accounts, partnerships, debts, doubtful or contested bargains, or non-performance of contracts, in which the cause of action may exceed 200 Rs., the Courts should recommend the parties to submit the decision of the matters in dispute to arbitration.(c)

What cases may be referred to one arbitrator.

2. In all suits for money or personal property, the amount or value of which may not exceed 200 Rs., the Courts are empowered, with the consent of the parties, to refer the suit to the decision of one arbitrator. The parties, or their vakeels, upon agreeing to the reference, should, on or before the next Court day, mutually choose some one common friend or disinterested person, who may be willing to undertake the arbitration. If the parties do not agree with respect to the person to be appointed arbitrator, or if the person nominated by them, refuse to accept the arbitration, and the parties or their Vakeels cannot agree in the appointment of another person willing to undertake the arbitration, the Court, with the consent of the parties, should appoint as arbitrator in the cause, the Proprietor of the estate in which the cause of action arose, or the farmer, if the estate be held in farm of Government; or the Cauzy of the pergunnah; or the Tahsildar, or any other creditable person; provided that the person so nominated by the Court be not, in any respect, interested in the matter in dispute. But if the parties cannot agree in the nomination of an arbitrator, or if the person whom they may nominate, should refuse to accept the trust, and the parties cannot agree upon the appointment of any other person willing to undertake the arbitration, or do not consent to the appointment of an arbitrator by the Court, the cause should not be referred to arbitration but should be tried by the Court. In the event of the parties or their Vakeels agreeing in the nomination of an arbitrator willing to accept the arbitration, or to an arbitrator being appointed by the Court, the person so chosen or appointed, should be the arbitrator in the cause. The

(c) Sec. 2, Reg. XXI., 1802.

parties however in suits of the nature of those described in this para. have the option of choosing two or more arbitrators to decide their cause.(*d*)

What order should be recorded by Court.

3. The acquiescence of the parties in the recommendation of the Court to go to arbitration, or their rejection of it, with the order of Court which may be passed in consequence, should be entered on the record, whether it be for referring the suit to arbitration, or setting it down for trial by the Court.(*e*)

Court should not compel a party to become arbitrator.

Who should not be employed in that capacity.

4. The Courts should afford every encouragement in their power to persons of character and credit to become arbitrators, but they should not employ any coercive means for that purpose, and (excepting their vakeels) (*f*) should not permit any of their public officers or private servants to be arbitrators in a cause. In all cases, the Courts should endeavor, but without using compulsion, to prevail upon parties to submit their cause to the arbitration of one person to be mutually agreed upon by them. In every case (with the exception of the cases specified in para. 2, which the Courts are empowered to refer to one arbitrator with the consent of the parties), the parties should choose the arbitrators, who should decide the matter in dispute without fee or reward.(*g*)

Arbitration bonds to be executed by parties.

Period for delivering award to be limited.

5. Whenever a suit may be submitted to arbitration, the Court should, previous to the arbitration, cause the parties to execute arbitration bonds, binding themselves to abide by the award, and agreeing that it be made a decree of the Court. The Court should fix such time as it may think reasonable upon a consideration of the nature and circumstances of the case, for the delivery of the award, and the period so fixed should be specified in the Bonds.(*h*)

Appointment of Umpire. When he may decide.

6. If the decision of the suit be referred to two or more arbitrators, whether an odd or an even number, the parties have the option of nominating jointly one person as Umpire; or if the number of arbitrators appointed be three or more, being an odd number, to agree that the award given by the majority should be final; or to permit the arbitrators to nominate an Umpire. The name of the Umpire and the time by which he should make his award, in the event of the arbitrators not delivering it by the limited period, should be specified in the Bonds, which should be executed before the arbitrators enter

(*d*) Sec. 3, Reg. XXI., 1802.
(*e*) C. O 3d April 1815.
(*f*) Sec. 19, Reg XIV, 1816.
(*g*) Sec. 4, Reg. XXI., 1802.
(*h*) Sec. 5, Reg. XXI, 1802.

upon the enquiry. In the event of Umpire being appointed, and the arbitrators not agreeing in an award by the limited period, their authority should cease from such period, and the Umpire should give the award.(*i*)

Trial. Default, contempt&c.punishable by Court.

7. The Court should transmit to the arbitrator or arbitrators a copy of the bill of complaint; and, by a short writing under the seal of the Court, refer to him or them, the matters in dispute between the parties. The arbitrators should investigate the matters in dispute by hearing the pleadings of the parties, and examining their respective witnesses, and documents. The Court, by its process, should cause the attendance of the parties and witnesses before the arbitrators, and should administer solemn affirmation to them, as in suits tried by the Court itself. Persons disobeying such process, or making any default, or refusing to give their testimony, or to sign their depositions, or being guilty of any contempt to the arbitrator or arbitrators during the investigation of the suit are subject to the like disadvantages, penalties, and punishments, by order made by the arbitrator or arbitrators, as they would incur for the same offences in suits tried before the Court; provided that the arbitrator or arbitrators report the order, with the reason for making it, to the Court, and obtain its consent thereto, which should be signified by the Judge signing the order. In cases in which an arbitration may be held at a considerable distance from the Court, the Court may grant commissions to the arbitrators to administer solemn affirmation to witnesses, whom they may be desirous of examining upon solemn affirmation.(*j*)

Time for delivering award may be extended.

8. In cases where arbitrators, or Umpires, may not have been able to complete the award by the limited time, from want of necessary evidence or information, or other good and sufficient cause, the Courts are empowered to allow a further time for the delivery of the award. In the first mentioned case, the Courts should fix a period by which the Umpire (if an Umpire had been appointed) should deliver his final award, in the event of the arbitrators not completing their award by the expiration of such further time.(*k*)

Record to be submitted to Court with award.

9. When a final award in a cause shall be made, either by arbitrators, or the Umpire, it should be submitted to the Court under the seal and signature of the person or persons by whom

(*i*) Sec. 5, Reg. XXI., 1802.
(*j*) Sec. 6, Reg. XXI., 1802.
(*k*) Sec. 7, Reg. XXI., 1802.

it may be made, together with all the proceedings, depositions and exhibits in the cause. The Court should pass a decree conformably to the award, and the decree be carried into execution in the same manner as other decrees of the Court.(*l*)

Award, to become decree of Court.

10. The award of an arbitrator or arbitrators is not to be set aside, unless gross corruption or partiality in the cause, on the part of the arbitrator or arbitrators, is proved to the satisfaction of the Court, by the solemn affirmation of two credible witnesses.(*m*)

When award may be set aside.

11. Appeals against Decrees of Courts founded on an award of arbitration should be dismissed with costs, unless corruption on the part of the arbitrators could be proved as above stated.(*n*)

Appeal from decree founded on award, dismissible with costs.
Exception.

12. Appeal causes cannot be referred to arbitration.(*o*)

Appeals cannot be referred to arbitration.

13. Sudr Ameens are empowered to refer suits to arbitration, subject to the rules already stated.(*p*)

Sudr Ameen can refer suits to arbitration.

14. A Court is empowered to permit any of its authorized vakeels to arbitrate in depending suits on its file, subject to the rules for referring suits to arbitration.(*q*)

Vakeels may arbitrate.

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15. A Village Moonsiff is authorized to try, as arbitrator, suits for sums of money or other personal property, the amount or value of which may not exceed one hundred Rupees; provided both the parties interested in such suits voluntarily agree in writing to refer them to his decision as arbitrator, and voluntarily subscribe Bonds in the presence of, and attested by, two or more credible witnesses; binding themselves to abide by the decision of the Moonsiff, whether he be the Moonsiff of their Village, or of any other Village.(*r*)

Village Moonsiffs may arbitrate.

16. In trying the suits above referred to, the Village Moonsiff should be guided by the rules prescribed for his conduct in the trial of regular suits cognizable by him, so far as those rules may be applicable.(*s*)

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17. A District Moonsiff is authorized to try, as arbitrator, all suits which may be voluntarily referred to him by both parties,

District Moonsiffs may arbitrate.

(*l*) Sec 8, Reg. XXI, 1802.
(*m*) Sec. 9, Reg. XXI., 1802.
(*n*) Sec. 28, Reg. IV., 1802.
(*o*) S. U. Dy. 19th, June, 1837.
D. S. U. S. A. No. 7., 1853.
(*p*) S. U. Pro. 3d July, 1835.
(*q*) Sec. 19, Reg. XIV., 1816.
(*r*) Sec. 27, Reg. IV., 1816.
(*s*) Sec. 28, Reg. IV., 1816.

whether for real or personal property, of the value or amount for which regular suits are cognizable by him; (*t*) and, in cases so referred to him, he should take from the parties a Bond, agreeing to abide by his decision; such Bond being executed in his presence, and attested, by two credible witnesses.(*u*)

18. The District Moonsiff in hearing and determining such suits should be guided by the same rules as are prescribed for his conduct in the trial of regular suits, so far as those rules may be applicable.(*v*)

VILLAGE PUNCHAYETS.

In what cases a Villge Punchayet may be summoned.

19. Village Moonsiffs are authorized to summon Punchayets within their respective villages for the decision of suits for sums of money or other personal property, without limitation as to amount or value, in the two following cases.(*w*)

In suits where both Plaintiff and Defendant may jointly agree that the matter at issue should be determined by a Village Punchayet without appeal, and may prefer a request in writing to the Village Moonsiff of the village in which the parties reside, or of any other village; or where one party, having preferred a request in writing to the Village Moonsiff to summon a Punchayet, the other party, being an inhabitant of the same village, on being summoned by the Village Moonsiff may attend and voluntarily give his assent in writing to the Village Moonsiff, agreeing to that mode of trial.(*x*)

Proviso.

Provided however, that in the cases above specified, the cause of action have arisen within twelve years previous to the institution of the suit, or that the Plaintiff do show by clear and positive proof, either that he had demanded the money or matter in question, and that the Defendant had admitted the justice of the demand, or that he had directly preferred his claim within the period above mentioned to a competent authority; and in such case that he assign satisfactory reason to the Punchayet why he did not proceed in the suit; or prove that from minority, or other good and sufficient cause, he was precluded from obtaining redress.(*y*)

(*t*) Cl. 1, Sec. 57, Reg. VI., 1816.
(*u*) Cl. 3, Sec. 57, Reg. VI., 1816.
(*v*) Cl. 4, Sec. 57, Reg. VI., 1816.
(*w*) Cl. 1, Sec. 2, Reg. V., 1816.
(*x*) Cl. 2, Sec. 2, Reg. V., 1816.
(*y*) Cl. 3, Sec. 2, Reg. V., 1816.

Suits for personal damages cannot be referred to Punchayet.

20. Village Moonsiffs cannot refer to a Punchayet for trial, any suit for damages, on account of personal injuries, or for personal damages of whatever nature.(z)

Constitution of Punchayet.

21. The Village Punchayet should always consist of an odd number, never less than five, nor more than eleven; and the majority should decide.(a)

Refusing Inhabitant liable to fine.

22. The Village Punchayet should be composed of the most respectable inhabitants of the village, who should be called upon to serve in rotation, whenever their number is sufficient for this purpose, and any inhabitant of the village refusing to serve on a Village Punchayet is liable to be fined at the discretion of the Village Moonsiff, in a sum not exceeding five Rupees, which should be levied, if necessary, by the Village Moonsiff, under the provisions contained in Section XXX., Regulation IV., 1816, for the execution of decrees.(b)

23. Any respectable inhabitant of a neighbouring village may be placed on a Village Punchayet, if he be willing to undertake the duty.(c)

24. When the parties in suits are of different castes or professions, the Village Moonsiff should, in all practicable cases, name an equal number of persons of the caste or profession to which each party may belong, to compose a part of the Village Punchayet, and should complete the Punchayet by the selection of a person or persons belonging to a caste or profession, different from that of both the parties.(d)

25. If either party object to any one or more of the members nominated to compose the Village Punchayet, and the Village Moonsiff consider such objection to be well grounded, he should withdraw the members objected to, and appoint others to serve in their stead.(e)

26. When the parties may desire it, they may each name two members, and the Village Moonsiff should name another person who may be unobjected to by the parties, to form the Punchayet, but on all other occasions, the whole should be nominated by the Village Moonsiff; the practice of the parties naming two members each, should never be allowed, when it can be avoided.(f)

(z) Sec. 12, Reg. V., 1816.
(a) Cl. 1, Sec. 3, Reg. V., 1816.
(b) Cl. 2, Sec. 3, Reg. V., 1816.
(c) Cl. 3, Sec. 3, Reg. V., 1816.
(d) Cl. 4, Sec. 3, Reg. V., 1816.
(e) Cl. 5, Sec. 3, Reg. V., 1816.
(f) Cl. 6, Sec. 3, Reg. V., 1816.

Mode of Procedure.

27. The Village Punchayet being formed as above mentioned, should commence their proceedings by requiring from the parties an agreement in writing to abide by the decision of such Punchayet, whose names should be inserted in the agreement which should be witnessed by the Village Moonsiff and Curnum, and dated on the same day.(g)

Vakeels.

28. Vakeels for Plaintiffs and Defendants should be admitted to plead before Village Punchayets, provided that every person so appearing as a Vakeel be a relative, servant or dependant of the person by whom he may be employed, and provided he be furnished with a Vakalutnamah, describing his relationship to his employer, and the matter in which he is empowered to act; such Vakalutnamah should be exhibited by the Vakeel before he be permitted to do any act in the suit.(h)

Plaint.

29. The parties being present, in person or by Vakeel, the Village Punchayet should receive the written Plaint of the complainant, which should state precisely the grounds of complaint, the time when the cause of action arose, the name and residence of the person or persons complained against, the total amount or value of the property claimed, and all material circumstances which may elucidate the transaction.(i)

Time limited for filing answer.

30. The plaint should be read to the Defendant or his Vakeel, and the Defendant or his Vakeel should be required by the Punchayet to give in his answer, either immediately, if he should be prepared to deliver it, or on a day to be fixed, which should not be later than one week from the reading of the plaint.(j)

Answer.

31. The Defendant should state in his answer all that he has to say regarding the case, and no further pleadings should be admitted.(k)

Exhibits and lists of witnesses.

32. The Punchayet, after the answer has been given in, should receive from the Plaintiff and Defendant their exhibits and lists of their witnesses, and should fix an early day for the trial, with reference to the convenience of the parties and witnesses respectively.(l) Exhibits should be received by the Punchayet under the same rules and restrictions, as are prescribed for the admission of Exhibits in suits before Village Moonsiffs.(m)

(g) Cl. 2, Sec. 4, Reg. V., 1816.
(h) Cl. 3, Sec. 4, Reg. V., 1816.
(i) Cl. 4, Sec 4, Reg. V., 1816.
(j) Cl. 5, Sec. 4, Reg. V., 1816.
(k) Cl. 6, Sec. 4, Reg. V., 1816.
(l) Cl. 7, Sec. 4, Reg. V., 1816.
(m) Sec. 15, Reg. V., 1816.

33. The Punchayet should immediately communicate the lists of witnesses and the day fixed for the trial to the Village Moonsiff, who should require the witnesses to be present on that day.(n)

Lists of witnesses and date fixed for trial to be communicated to Village Moonsiff.

34. The parties and witnesses being in attendance on the prescribed day, the Punchayet should proceed to take the depositions of the witnesses, in the manner usual in the caste to which they may respectively belong, on separate papers or cadjan leaves, in all cases in which the matter at issue may exceed the value or amount of twenty Rupees, the deposition should be read over to the witness, and his signature or mark be affixed thereto.(o)

Examination of witnesses.

35. In cases in which the matter at issue may be of smaller amount or value than twenty Rupees, it is discretionary with the Punchayet to take the depositions of the witnesses in writing or not.(p)

36. The Punchayet is competent to cause a solemn affirmation to be administered to witnesses in cases where they may deem it necessary.(q)

Solemn affirmation may be administered.

37. Questions suggesting particular answers should not be put to the witnesses, who, previous to the investigation, should be informed that the Punchayet has authority to cause a solemn affirmation to be administered to them, should the Punchayet think that they do not give their evidence correctly. This authority the Punchayet should exercise at discretion.(r)

38. If the parties, or either of them, fail to appear in person or by Vakeel at the time fixed for the trial, the Punchayet should suspend the trial, and report having done so to the Village Moonsiff, who should cause to be affixed in some conspicuous place of the Village, a Notice, specifying that the suit will be tried on a given day, which should not be less than five days from the date of the Notice.(s)

Trial may be suspended.

39. If the Plaintiff should not appear at the time fixed in the Notice, the Punchayet should dismiss his suit, which cannot be revived, unless the Plaintiff can adduce sufficient cause for his absence.(t)

When suit may be dismissed.

(n) Cl. 8, Sec. 4, Reg. V., 1816.
(o) Cl. 9, Sec. 4, Reg. V., 1816.
(p) Cl. 10, Sec. 4, Reg. V., 1816.
(q) Cl. 11, Sec. 4, Reg. V., 1816.
(r) Cl. 12, Sec. 4, Reg. V., 1816.
(s) Cl. 13, Sec. 4, Reg. V., 1816.
(t) Cl. 14, Sec. 4, Reg. V., 1816.

When it may be tried *ex parte*.

40. If the Defendant refuse to answer the Plaint, or do not attend at the time fixed in the Notice, the Punchayet should proceed to give judgment *ex parte*.(*u*)

What circumstances should be reported to Village Moonsiff. How he should proceed.

41. In cases where a witness may neglect to attend, or attending, refuse to give his testimony, or be otherwise guilty of disrespect to the Punchayet; or where the evidence may be required of a person residing beyond the jurisdiction of the Village Moonsiff; or where, in the cases of persons whose testimony may be required, but whose rank or caste may render it improper to require their attendance; or where the parties or their Vakeels may be guilty of disrespect to the Punchayet; the Punchayet should report the circumstances to the Village Moonsiff, whose duty it will be, on receiving such report, to take the same measures for procuring the attendance or testimony of the witnesses, or for punishing the contempt, as he would have taken, if the circumstances represented had occurred before himself.(*v*)

Decree.

42. When both parties have been heard, and the whole of the evidence received, the Punchayet should order the parties and witnesses to withdraw, and should write its decree according to justice and right.(*w*)

43. The decree of the Punchayet should contain the names of the parties and of the witnesses examined, and the titles of the exhibits read, as also an abstract statement of the principal grounds and reasons on which the decision may be passed, with a specification of the sum of money or the value of the personal property adjudged. The decree should be signed or marked by the several members of the Punchayet, and be dated on the day on which it is passed.(*x*)

44. Two copies of the decree should be prepared by the Punchayet, put under a sealed cover and delivered to the Village Moonsiff, who should require the parties, together with the Punchayet, to assemble immediately, or at a convenient day, not being later than three days from his receipt of the decree. On the day appointed, the Village Moonsiff should open the seal in presence of the parties, and cause the Curnum to indorse, on each copy of the decree, the date of the delivery thereof, which should be attested by the signature of the Village Moonsiff, the Curnum and any member of the Punchayet. The Vil-

(*u*) Cl. 15, Sec. 4, Reg. V., 1816.
(*v*) Sec. 5, Reg. V., 1816.
(*w*) Sec. 6, Reg. V., 1816.
(*x*) Sec. 7, Reg. V., 1816.

lage Moonsiff should then cause the Punchayet to deliver to each party, in his presence, a copy of the decree, but no communication should be made to the Village Moonsiff, or to either party, of the nature of the decree previously to its delivery.(y)

45. If either the Plaintiff or the Defendant should fail to appear in person or by vakeel, to receive a copy of the decree, or having attended, should refuse to receive a copy, the Village Moonsiff should cause the Curnum to endorse, on the copy intended for such party, such omission or refusal, and the date thereof. The Village Moonsiff should attest the same with his signature, which should be witnessed by the Curnum, and any member of the Punchayet, and the copy so endorsed, deposited with the Village Curnum, to be delivered to the party afterwards claiming it.(z)

46. The proceedings of the Punchayet should be written either by one of the members, or by the Village Curnum.(a)

Proceedings should be written by a member, or by Curnum.

47. An appeal from the decision of a Village Punchayet lies to the Subordinate Judge or Principal Sudr Ameen, who should make a report of the case to the Zillah Judge.(b)

To whom appeal may be preferred.

48. Any member or members of a Village Punchayet may be prosecuted in the Court of the Subordinate Judge, or Principal Sudr Ameen, for corruption in the discharge of their trust, by either party in a suit tried by it; and upon proof of the charge to the satisfaction of the Court, the offender or offenders should be adjudged to pay the prosecutor three times the amount or value of the money or property corruptly received, with all costs of suit. But members of village Punchayets are not liable to be prosecuted for want of form, or for error in their proceedings or judgment; nor can any process whatever be issued against a member or members of a village Punchayet, who may be charged with corruption, unless the Judge be previously satisfied by sufficient evidence that there is probable cause to believe that the charge is well founded, and unless the charge be preferred within three months from the date of the act of corruption complained of.(c)

Members liable to prosecution for corruption.

Punishment on conviction.

Not liable to prosecution for errors or want of form.

Circumstances under which process can issue against members charged with corruption.

(y) Sec. 8, Reg. V., 1816.
(z) Sec. 9, Reg. V., 1816.
(a) Sec. 10, Reg. V., 1816.
(b) S. U. Pro. 4th March 1844, para 6.
(c) Cl. 1, Sec. 18, Reg. V., 1816.

Party by whom, or for whom corruption is practised may be fined.

49. The Subordinate Judge or Principal Sudr Ameen should further fine the party by whom, or for whom, the corruption may have been practised in the suit, provided he assented to such corruption, in a sum equal to the value of the thing or sum of money which any member or members of such Punchayet may be proved to have corruptly received.(*d*)

What award should be made if corruption be not proved.

50. If the corruption charged against any member or members of a Punchayet be not proved to the satisfaction of the Subordinate Judge or Principal Sudr Ameen, full costs, and such damages to such member or members as may appear to be equitable, should be awarded, and a fine levied from the complainant, not exceeding the value of the thing or sum of money alleged to have been corruptly received.(*e*)

DISTRICT PUNCHAYETS.
In what cases a District Punchayet may be summoned.

51. District Moonsiffs are authorized to summon Punchayets for the decision of suits for real and personal property of any amount or value, in the cases, and subject to the restrictions stated in paras. 19 and 20.(*f*)

Rules of procedure.

52. The rules relating to the constitution and procedure of District Punchayets are similar to those above detailed, in regard to Village Punchayets, with only the following modifications.(*g*)

Where Punchayet should sit.

53. The District Punchayet should sit at the Station where the District Moonsiff's Court is held.(*h*)

Party refusing to serve liable to fine.

54. Any party refusing to serve on a District Punchayet is liable to be fined by the District Moonsiff in a sum not exceeding ten Rupees, which should be levied by the District Moonsiff, if necessary, by the attachment and sale of the property of such party.(*i*)

Moochilka to be attested by District Moonsiff.

55. The written agreement, mentioned in para. 27, should be witnessed by the District Moonsiff and any two respectable inhabitants.(*j*)

When depositions of witnesses may be taken in writing or not.

56. In cases in which the matter at issue may be of smaller amount than one hundred Rupees, it is discretionary with the District Punchayet to take the depositions of the witnesses in writing, or not.(*k*)

(*d*) Cl. 2, Sec. 18, Reg. V., 1816.
(*e*) Cl. 3, Sec. 18, Reg. V., 1816.
(*f*) Sec. 2, Reg. VII., 1816.
(*g*) Reg. VII., 1816.
(*h*) Cl. 1, Sec. 3, Reg. VII., 1816.
(*i*) Cl. 2, Sec. 3, Reg. VII., 1816.
(*j*) Cl. 2, Sec. 4, Reg. VII., 1816.
(*k*) Cl. 10, Sec. 4, Reg. VII., 1816.

57. The suit should be dismissed, if the Plaintiff fail to appear within the time limited in the notice specified in para. 36; and he should be adjudged to pay all the expenses which may have been incurred by the Defendant and by the witnesses of both parties in their attendance on the Punchayet; the sum so adjudged being recovered by the sale of the property of the defaulting Plaintiff, should he fail immediately to pay the amount.(*l*)

When suit should be dismissed.

58. Exhibits should be received by a District Punchayet, under the same rules and restrictions as are prescribed for the admission of exhibits by District Moonsiff.(*m*)

Exhibits.

59. In all cases of inheritance of, or succession to, landed property, the Mahomedan laws with respect to Mahomedans, and the Hindoo Laws with regard to Hindoos, should regulate the decision of the District Punchayet, an exposition of the law being obtained from the Pundits of the Sudr Court, through the medium of the District Moonsiff.(*n*)

Procedure in cases of inheritance of, or succession to, landed property.

60. If a claim should appear to the Punchayet to be litigious and vexatious, it should adjudge suitable costs and damages against the Plaintiff, payable to the Defendant, and insert the same in the Decree.(*o*)

Penalty for vexatious and litigious suits.

61. Appeals from Decision of District Punchayets lie direct to the Zillah Judge.(*p*)

To whom appeal lies.

62. Members of District Punchayets are liable to prosecution in the Zillah Court for corruption in the discharge of their trust under Sec. 18, Reg. VII., 1816, the provisions of which are precisely similar to those contained in paras. 48 and 50.

Members liable to prosecution for corruption.

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63. In cases of claims to lands or crops in Districts, permanently settled or otherwise, the validity of which claims may depend on the determination of an uncertain and disputed boundary or land-mark; and also in cases of disputes respecting the occupying, cultivating and irrigating of land, which may arise between the proprietors or renters, and their ryots; or between ryot and ryot, in Districts, whether permanently assessed or otherwise; persons having such claims may bring them in

REVENUE PUNCHAYETS.

(*l*) Cl. 14, Sec. 4, Reg. VII., 1816.
(*m*) Sec. 15, Reg. VII., 1816.
(*n*) Sec. 14, Reg. VII., 1816.
(*o*) Sec. 7, Reg. VII., 1816.
(*p*) S. U. Pro. 4th March 1844, para. 9.

person or by Vakeel to the Collector of the District in which the lands may be situated.(q)

64. The Plaint, if for land, should contain as accurate a description as can be obtained, of the land claimed, its position, boundaries, extent, and the value of its estimated annual produce, and should state whether it is subject to the payment of rent or revenue, or exempt from any charge on these accounts; also the time when the cause of action arose, the name and the residence of the person or persons complained against, and all material circumstances which may elucidate the transaction.(r)

65. If the Plaint be for water, it should, with regard to the land to be watered, state the above particulars, and in addition thereto, the custom of the village relative to the irrigation of the land in question.(s)

When Collector may direct village Moonsiff to summon Punchayet.

66. If the Defendant should appear and deny the truth of the Plaint, the Collector should enquire of the parties whether they mutually consent to have the cause investigated and decided by a Village Punchayet; and, upon their agreeing to that effect in writing, the Collector should immediately forward the petition of plaint, with an order to the Moonsiff of the particular Village selected by the parties, or assemble a Punchayet without delay, to investigate and determine the suit.(t)

When he may direct District Moonsiff to summon Punchayet.

67. If either the Plaintiff or Defendant object to the reference of the cause for decision by a Village Punchayet, and either of them desire in writing, that it may be referred to a District Punchayet, the Collector, whether the other party agree to such reference or not, should forward the Plaint to the Moonsiff of the district in which the disputed property may be situated, with an order to assemble a Punchayet within 15 days from the receipt of such order, to investigate and determine the suit.(u)

When suit should be dismissed.

68. If neither of the parties agree to the reference of the suit to a District Punchayet, the suit should be dismissed, and the parties should be left at liberty to seek redress from the Zillah Court or any competent jurisdiction.(v)

(q) Cl. 1, Sec. 4, Reg. XII., 1816. Sec. 18, Reg. V., 1822.
(r) Cl. 2, Sec. 14, Reg. XII., 1816.
(s) Cl. 3, Sec. 14, Reg. XII., 1816.
(t) Cl. 6, Sec. 5, Reg. XII, 1816.
(u) Cl. 7, Sec. 5, Reg. XII., 1816.
(v) Cl. 8, Sec. 5, Reg. XII., 1816.

How Punchayet should be assembled, and how proceedings conducted.

69. The Zillah Judge is competent to issue instructions for the guidance of a District Punchayet in the foregoing cases, if applied to for the purpose, on occasions of doubt or difficulty,(w) but, ordinarily, the Punchayets above referred to should be assembled according to the rules prescribed for assembling village and district Punchayets, and their proceedings conducted according to the general rules enacted in Regulations V. and VII., 1816, with the following modifications.(x)

70. When only one of the parties may appear before the District Moonsiff, the Punchayet should be formed upon the challenge of such party only, and should proceed to try the suit, without requiring the written agreement alluded to in para. 55 (y)

Decree.

71. When the Decree has been framed, and two copies of it prepared, it should be read in the presence of the parties, and the two copies sealed up in a packet and delivered to the Moonsiff, who should forward it to the Collector sealed, as he received it (z)

72. Decrees of the Village and District Punchayets in suits which may, as above, be referred to them by the Collectors, cannot be carried into execution until confirmed by the Collector, nor can they be set aside for any other cause than gross partiality on the part of the Punchayet.(a)

73. The Collector should detain the packet in the state in which he received it, for twenty days, and if in that time no charge of gross partiality be preferred by either party against the Punchayet, he should open the packet, and confirm the decision by affixing his seal and signature to each of the two copies, and return them to the Moonsiff from whom he received them (b)

74. The Moonsiff on receiving the said copies should summon the parties and deliver to each a copy.(c)

75. If either the Plaintiff or Defendant fail to appear in person or by Vakeel to receive a copy of the Decree, or, having attended, refuse to receive a copy, the Moonsiff should

(w) C. O. 28th February 1828.
(x) Cl. 1, Sec. 6, Reg. XII., 1816.
(y) Cl. 2, Sec. 6, Reg. XII., 1816.
(z) Cl. 3, Sec. 6, Reg. XII, 1816.
(a) Cl. 4, Sec. 6, Reg. XII., 1816.
(b) Sec. 7, Reg. XII., 1816.
(c) Cl. 1, Sec. 8, Reg. XII., 1816.

cause to be endorsed on the copy intended for such party, such omission or refusal, and the date thereof. The Moonsiff should attest the same with his signature, which should be witnessed by any two credible witnesses. The copy so endorsed should be deposited in the records of the District Moonsiff or the village Curnum as the case may be, to be delivered to the party afterwards claiming it.(*d*)

How Collector should proceed on charge of partiality being preferred and proved.

76. If either of the parties should, within the prescribed period of twenty days, charge the Punchayet with gross partiality, and the partiality be established to the satisfaction of the Collector, by the *solemn affirmations* of at least two credible witnesses, he should, in every case, whatever the amount or value of the suit may be, submit his proceedings, with his opinion on the case to the Zillah Judge, who, provided the charge be proved by such proceedings to his satisfaction, should annul the decision, and the parties should be at liberty to have recourse to another Punchayet, or to any other competent jurisdiction.(*e*)

When decision of second Punchayet is final.

77. Where, however, the decision of a second Punchayet may agree with that of a former Punchayet in the same suit, the second decision is final.(*f*)

How Collector should proceed if partiality be not proved.

78. If the partiality charged against the Punchayet be not proved to the satisfaction of the Collector, he should confirm the decision, as prescribed in para. 73, and levy a fine, not exceeding one hundred Rupees, from the party making such groundless charge.(*g*)

Omission to execute Moochilka fatal to award.

79. The omission to take before a Punchayet convened under the above provisions, the agreement in writing required by para. 27, was held by the Sudr Court, in a case referred to it, to be fatal to the award.(*h*)

Construction of Sec. 18, Reg. V. 1822.

80. Although in Section 18, Regulation V., 1822, Section 4, Regulation XII., 1816, is alone mentioned, the Sudr Court was of opinion that the whole of the latter Regulation was applicable to suits brought under Sec. 18, Regulation V., 1822.(*i*)

(*d*) Cl. 2, Sec. 8, Reg. XII., 1816.
(*e*) Cl. 1, Sec. 9, Reg. XII., 1816.
(*f*) Cl. 2, Sec. 9, Reg. XII., 1816.
(*g*) Cl. 3, Sec. 9, Reg. XII., 1816.
(*h*) S. U. Dy. 27th January 1837.
(*i*) S. U. Dy. 27th January 1837.

81. Village and District Moonsiffs should include in their Monthly Reports, all decisions of Punchayets in suits referred to them by Collector under the provisions aforementioned.(j)

Decisions of Punchayet to be included in Moonsiff's Reports.

82. The Collector is also authorized to refer all disputes brought before him respecting arrears of rent or revenue, rates of assessment, or division in kind, as well as all questions of the rights of occupancy or possession of lands or crops, to a District or Village Punchayet for decision, provided both parties agree to that mode of settlement.(k) The Collector has authority in such cases to exercise the powers vested respectively in Village and District Moonsiffs, under Regulations V. and VII., 1816.(l)

What other cases may be referred by Collector to Punchayet.

Collector can himself convene Punchayet.

83. The provisions of Regulation XII., 1816, are not applicable to disputes and questions of the above nature, inasmuch as under that Regulation, the Collector is obliged to hear the parties, and to employ the agency of the Village or District Moonsiff, in convening the required Punchayet; whereas, under the provisions of the preceding para., he is not required thus to hear the parties, but can himself exercise the power of a Village or District Moonsiff in assembling Punchayets.(m)

84. When suits respecting disputed lands and crops may be referred to a Punchayet, the Collector may, on the application of either party, put one party immediately in possession and maintain him in it till a decision be passed.(n)

One of the litigant parties may be put in possession by Collector.

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85. Officers in immediate charge of the Military Police at Military Bazar stations have authority to summon Punchayets for the decision of suits for sums of money or other personal property, without limitation as to amount or value, provided the Defendant in the suit was a native officer or soldier, or other person amenable to the articles of war, at the time when the cause of action arose, as well as at the institution of the suit, and provided both parties consent in writing to such mode of decision.(o)

MILITARY PUNCHAYETS.

In what cases they may be summoned.

86. Each party should nominate two members of the Punchayet, and the officer in charge of the Police should nominate

Constitution of Punchayet.

(j) Sec. 12, Reg. XII., 1816.
(k) Cl. 1, Sec. 15, Reg. V., 1822.
(l) Cl. 2, Sec. 15, Reg. V., 1822.
(m) S. C. Dy. 27th January 1837.
(n) Sec. 17, Reg. V., 1822.
(o) Sec. 24, Reg. VII., 1832.

one additional member, who should be unobjected to by the two parties.(p)

How it should be assembled, and should proceed.

87. The Punchayet should be assembled by the written summons of the officer in charge of the Police, and should proceed in the same manner as District Punchayets under Reg. VII., 1816, with the exceptions hereunder specified.(q)

Moochilka.

88. The usual Moochilka of the parties, to abide by the award of the Punchayet, should be witnessed and dated by the officer in charge of the Police and in his office; and the Punchayet should make to him all such communications and reports as District Punchayets are required to make to District Moonsiffs, and also deliver to him their proceedings and two copies of the award.(r)

How witnesses should be required to attend.

89. The officer in charge of the Police, on receiving from the Punchayet, a list of the witnesses, and a notification of the day fixed for the trial, should require the attendance of the witnesses, in conformity to the rules prescribed in cases coming under his own cognizance.(s)

Procedure when parties fail to attend.

90. If the Punchayet should report to the officer in charge of the Police that the parties, or either of them, have failed to attend in person or by Vakeel at the time fixed for the trial, the officer should cause to be affixed in some conspicuous situation in the village, or other place, where the defaulting party may reside, a Notice specifying that the suit will be tried on a given day, which should not be less than five days from the date of such notice.(t)

When witness fails to attend.

91. If the Punchayet should report to the officer in charge of the Police that a witness has refused or neglected to attend, or to give his testimony, or to sign his deposition, the officer should proceed, as if the circumstances represented had occurred in a suit tried by himself.(u)

Punishment for disrespect to Punchayet.

92. If the Punchayet should report to the officer in charge of the Police that a party or a witness has been guilty of gross disrespect to it, the officer may impose a fine on such party or witness, proportioned to his situation and circumstances in

(p) Sec. 25, Reg. VII., 1832.
(q) Cl. 1, Sec. 26, Reg. VII., 1832.
(r) Cl. 2, Sec. 26, Reg. VII., 1832.
(s) Cl. 3, Sec. 26, Reg. VII., 1832.
(t) Cl. 4, Sec. 26, Reg. VII., 1832.
(u) Cl. 5, Sec. 26, Reg. VII., 1832.

life, but in no case, exceeding ten Rupees, to be commuted, if not paid, to imprisonment not exceeding, in any case, five days.(*v*)

93. The Officer in charge of the Police, on receiving the award of the Punchayet, should summon the parties before him, and, after declaring the decision of the Punchayet, should deliver a copy to each party, endorsing thereon the date of the delivery.(*w*) Award.

94. If either party should neglect or refuse to attend or to receive a copy of the award, the Officer in charge of the Police should endorse on the copy intended for such party his neglect or refusal with the date thereof, and attest it with his official signature and return the copy, to be afterwards delivered to the party, if he should claim it.(*x*)

95. Appeals from the decisions of the aforementioned Military Punchayets should be preferred to the Zillah Judge.(*y*) To whom appeal lies.

96. Members of such Punchayets are liable to prosecution, in the Zillah Court, for corruption in the discharge of their trust, conformably to the provisions of Section 18, Regulation VII of 1816.(*z*) Members of Punchayet liable to prosecution for corruption.

97. An Officer commanding a field station beyond the Frontier, or a detachment in the field beyond the Frontier, is authorized to refer by the mutual consent of the parties, for decision by a native Punchayet, civil suits for any amount or value, not cognizable under Section 41, Regulation VII of 1832, nor by a Native Military Court of Requests, nor by any of the Civil Courts under this Government, wherein the Defendant, at the time the cause of action arose, was a Native Officer or Soldier or other person amenable to the Articles of War, and at the time of the institution of the suit continued so to be, at any station beyond the Frontier, or with any detachment in the field beyond the Frontier.(*a*) Military Punchayets beyond the Frontier.

98. The Punchayet, in the foregoing case, should consist of five Members, of whom each party in the suit should nominate two, and the Commanding Officer, the fifth.(*b*) Constitution.

99. The decision of the Punchayet should be carried into effect by the Commanding Officer, unless either party, within Decision.

(*v*) Cl. 6, Sec. 26, Reg. VII, 1832.
(*w*) Cl. 7, Sec. 26, Ibid.
(*x*) Cl. 8, Sec. 26, Ibid.
(*y*) S. U. Pro. 4th March 1814, para. 9.
(*z*) Sec. 30, Reg. VII, 1832.
(*a*) Cl. 1, Sec. 42, Ibid
(*b*) Ibid.

ten days after the passing of the same, present to him in writing a charge of gross partiality against the Punchayet. In such cases an appeal lies to the tribunal specified in the following para.(c)

For the decision of what matters a court martial may be assembled.

100. Where the Defendant in any of the suits specified in para 97 may altogether refuse to refer the claim upon him to the decision of a Punchayet; or where, having consented thereto and an award having been passed, a charge of partiality may be preferred against the Punchayet, within the above period of ten days, the Officer Commanding should immediately assemble a Court Martial, to be composed of not fewer than five experienced European Officers including the President, who should not, on any occasion, be below the rank of Captain, and in all possible instances should be a Field Officer. The decision of such Court Martial is final, and judgment thereupon should be carried into effect under the orders of the Officer Commanding.(d)

Punchayet may admit Rauzeenamah.

101. A Punchayet, as other tribunals, is competent to admit a Rauzeenamah. The submission to the award of a Punchayet is by consent of *both* parties, except in the particular case instanced in para 67, in which case the law deems the refusal unreasonable, and views the refuser in the same light as if he consented. Therefore, as the cause is submitted to arbitration by consent of both parties, it may also be *withdrawn* by mutual consent; and the Moochilka to abide by the award, if one have been executed, becomes void of course.(e)

Signature of majority of a Punchayet legalizes award.

102. In cases where the minority of the members of a Punchayet may decline to sign the award, the signatures or marks of the majority will be sufficient to give it legal validity. But always, in such cases, it will be incumbent on such majority to admit the minority to record their reasons for declining to sign the award.(f)

Death of a member dissolves Punchayet.

103. In the event of one or more members of a Punchayet dying before the award is framed, the Punchayet must be considered as dissolved *de facto*, and the Moochilka executed by the parties to have become null and void in law. The parties will therefore be at liberty either to apply for a new Punchayet, or to prefer their claims to any other competent tribunal. If they

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(c) Cl. 2, Sec. 42, Reg. VII, 1832.
(d) Cl. 3, Ibid.
(e) C. O. 28th February 1828.
(f) Act. VIII, 1840.

apply for a new Punchayet, the surviving members of the old one will of course be eligible to sit upon it, and (in favor of witnesses) the new Punchayet may avail itself of any depositions in writing, before the old one, which may be duly authenticated.(g)

104. A Punchayet is wholly incompetent to enquire into the merits of a case finally decided by a decree of Court.(h)

What a Punchayet is incompetent to enquire into.

(g) C. O. 27th March 1828.

(h) S. U. Pro. 24th October 1836.

ASSISTANT JUDGE.

It is competent to the Governor in Council to appoint an Assistant Judge to any Zillah Court, to whom the Zillah Judge could refer any appeals depending before him, excepting appeals from decisions of Subordinate Judges or Principal Sudr Ameens. The Assistant Judge in the trial of appeals so referred to him, should be guided by the rules applicable to the Zillah Judge.(i)

(i) Sec. 52, Act VII., 1843.

COLLECTORS' JUDICIAL POWERS.

1. CLAIMS to lands or crops in districts permanently settled or otherwise, the validity of which claims may depend on the determination of an uncertain and disputed boundary or land mark; and disputes respecting the occupying, cultivating and irrigating of land which may arise between the proprietors or renters and their ryots, or between ryot and ryot, in Districts whether permanently assessed or otherwise, may be brought before the Collector of the District in which the lands may be situated.(*j*)

In what cases persons may prefer their claims to Collectors.

2. Persons preferring such claims should do so in person or by a Vakeel.(*k*)

How such claims should be preferred.

3. The plaint, if for land, should contain as accurate a description as can be obtained of the land claimed, its position, boundaries, extent and the value of its estimated annual produce, and should state whether it is subject to the payment of rent or revenue, or exempt from any charge on those accounts, also the time when the cause of action arose, the name and residence of the person or persons complained against, and all material circumstances which may elucidate the transaction.(*l*)

What Plaint should contain, if for land;

4. If the plaint be for water, it should, with regard to the land to be watered, state the above particulars, and in addition thereto, the custom of the Village relative to the irrigation of the land in question.(*m*)

What, if for water.

5. Plaintiffs and Defendants should be allowed to employ a relative, a servant, or a dependent to act in their behalf in the above suits brought before Collectors, on furnishing the person so employed with a Vakalutnamah, describing his relationship to his employer, and the matter in which he is empowered to act. The Vakalutnamah should be exhibited to the Collector before the person can be permitted to act as Vakeel.(*n*)

Vakeels to be servants, or dependents of their employers.

(*j*) Cl. 1, Sec. 4, Reg. XII., 1816. Sec. 18, Reg. V., 1822.
(*k*) Cl. 1, Sec. 4, Reg. XII., 1816.
(*l*) Cl. 2, Ibid.
(*m*) Cl. 3, Ibid.
(*n*) Sec. 3, Reg. XII., 1816.

Summons to Defendant.

6. The Collector, on receiving a complaint preferred under the foregoing provisions, should issue a summons to the Defendant, containing a short abstract of the complaint and requiring him to appear at the Cutcherry of the Collector, in person or by Vakeel, on a day specified, to make answer to the complaint. The summons should be attested by the seal of the Collector, and either his official signature, or that of his assistant; and be served by a single Peon of the Collector's establishment.(o)

How summons should be served. How refusal to acknowledge summons should be attested.

7. The Collector's Peon should require the Defendant to affix his signature to the summons, in acknowledgment of its having been duly served, and in the event of the Defendant refusing to affix his signature, the Peon should call upon some of the village officers or neighbors of the Defendant to witness such refusal and to attest the endorsement of it, which he should make on the summons, and he should return the same to the Collector on or before the day fixed for such return.(p)

How Collector should proceed if Defendant cannot be found, or refuse to acknowledge summons.

8. If a Defendant, against whom a summons issues, abscond, or cannot after diligent search be found, or shut himself up in his own, or in any house or building, or retire to any place, so that the process cannot be served upon him; and the Peon return that on such account he has not been able to serve or execute the process; or if he refuse to acknowledge the service of the summons, on return being made in the mode prescribed in the preceding para, the Collector should cause a writing in the language of the district to be stuck up in some conspicuous part of his Cutcherry, containing a copy of the summons, and a notice that if the party do not appear on a day to be specified (which should not be less than fifteen days from the time the notice may be fixed up), the Collector should proceed without further notice, to refer the cause, with the consent of the Plaintiff, to be tried and determined by a Punchayet of the District in which the disputed lands may be situated, without the appearance or answer of the Defendant. The Collector should likewise order a copy of the summons and notice to be fixed up with all practicable despatch, on the outer door of the house in which the Defendant may have usually dwelt, or in some conspicuous place in the village, or other place in which he may have generally resided. The Peon serv-

(o) Cl. 1, Sec. 5, Reg. XII., 1816. | (p) Cl. 2, Ibid.

ing the summons should return the order, with an endorsement stating at what times and places the summons was so fixed up.(q)

Procedure upon appearance of Defendant.

9. If the Defendant should appear by the time limited in the Notice, the Collector should proceed to investigate the cause of his absence, or the circumstances of his refusal to sign the summons, and if it should satisfactorily appear that the conduct of the Defendant was contemptuous, the Collector may punish such contempt by a fine not exceeding ten Rupees; and if such fine be not immediately paid, or security given for the payment, within a reasonable time, the Collector should punish him by committing him to the Zillah Jail, or by keeping him in custody in the Cutcherry or Village Choultry, for a period not, in any case, exceeding fifteen days, or until the fine be paid.(r)

Plaint to be read to Defendant.

How Collector should proceed, if Defendant admit truth of Plaint.

10. In the event of the Defendant appearing according to the first summons or by the time limited in the notice, the Collector should cause the Plaint to be read over to him in the presence of the Plaintiff, and demand whether he admits, or denies the truth of it. If the Defendant should acquiesce in the truth of the complaint, the Collector should record such acquiescence at the foot of the Plaint, and require the Defendant to attest the same with his signature in the presence of witnesses, not being servants of the Collector's establishment, who should also attest the same, and the document should be countersigned by the Collector, who should return it to the complainant, together with an order to the Tahsildar, or principal native revenue Officer of the district, or to the Village Moonsiff, to transfer the lands described in the Plaint to the Plaintiff; or if the Plaint includes crops grown on such lands, to cause the crops, or the value of them, to be restored to the Plaintiff by the Defendant; or if the Plaint be for water, to order the water to be distributed as required in the Plaint; and no other proceedings will be necessary in the cause.(s)

How he should proceed, if Defendant deny truth of Plaint.

11. If the Defendant should deny the truth of the Plaint, the Collector should propose to the parties to refer the cause to a village Punchayet for settlement; but should they object to this reference, or to the reference of the cause to a District Punchayet, the Collector should dismiss the suit, leaving the

(q) Cl. 3, Sec. 5, Reg. XII., 1816.
(r) Cl. 4, Ibid.
(s) Cl. 5, Ibid.

Plaintiff at liberty to seek redress from the Zillah Court, or any competent jurisdiction.(*t*)

Collector may take cognizance of cases of forcible dispossession of lands or crops.

12. Whenever any person laying claim to lands or crops in the possession of others may forcibly take possession of the same, the party dispossessed may bring the case before the Collector of the District, who, upon proof of the forcible ejection, and of the actual previous possession by the ejected party, should cause the lands or crops to be restored to the complainant, or the value of the crops to be paid to him, should they be damaged, destroyed or not forthcoming; and should further award against the offender equitable costs and damages.(*u*)

Procedure

13. The simple order of a Collector to the Revenue Peishcar to retain a party in possession of land, without any personal examination into the case, and where no ejection or force was used, is not such a decision as is contemplated under the provisions of the preceding para.(*v*)

Note.—By Clause first, Section 2, *Regulation V. of* 1822, *Collectors are authorized to take primary cognizance, by summary process, of all cases which, under the provisions of Regulations XXVIII and XXX of* 1802, *were summarily cognizable by the Zillah Courts, with the exception of those referred to in Sections* 35 *and* 40 *of Regulation XXVIII of* 1802. *But the Sudr Court, in a letter to Government under date the* 20*th December* 1834, *pointed out that* no *suits were* summarily *cognizable by the Zillah Courts under the last mentioned two Regulations, save those referred to in Section* 34, *Regulation XXVIII. of* 1802, *and that consequently the authority vested in Collectors by Section* 2, *Regulation V. of* 1822, *would be inoperative. In consequence of the doubts and difficulties raised by the above letter, and as the whole subject is now, under the orders of the Government, undergoing revision, the provisions of Law alluded to have not been inserted in this place.*

(*t*) Cl. 5, 6, 7 and 8, Reg. XII, 1816.
(*u*) Sec. 11, Reg. V, 1822.
(*v*) D. S. U. S. A. 13 of 1851.

DECREES.

SECTION I.

PRINCIPLES AND SUBSTANCE OF JUDGMENT.

1. The Courts are to give judgment according to justice and right.(*w*)

2. In cases coming within the jurisdiction of the Courts for which no specific rule may exist, they are to act according to justice, equity and good conscience.(*x*)

3. The Conrts are bound to decide all questions of usage as well as of law.(*y*)

4. A Decree should invariably set forth the grounds on which it is passed, and specify the sum of money or property adjudged.(*z*)

5. A Decree should be passed with reference to the various points or issues recorded to be established by the parties respectively. To discuss a point not raised in the pleadings, or to pass a Decree, based upon the mere inferences of the Judge, those inferences being derived from circumstances assumed, but not proved by evidence, is irregular.(*a*)

Decree should be passed with reference to recorded points.

6. A Court must deal with the evidence before it, and not with general practices.(*b*)

7. A Decree should not declare an alternative for the option of the parties.(*c*)

8. Where no question as to the Plaintiff's proprietary title to land is involved in the suit, it is not competent to the Court to raise any such question of itself.(*d*)

(*w*) Sec. 9, Reg. III., 1802.
Sec. 36, Reg. VI., 1816.
(*x*) Sec. 17, Reg. II., 1802.
Sec. 34, Reg. IV., 1802.
Sec. 30, Reg. V., 1802.
(*y*) D. S. S. A. 7 of 1837.
(*z*) Ibid 50 and 63 of 1851.
(*a*) Ibid 24 of 1847.
44 and 59 of 1851.
(*b*) Ibid 25 of 1852.
(*c*) Ibid 17 of 1850.
(*d*) Ibid 43 of 1853.

9. A Decree should not award things not sued for, nor adjudicate upon the rights of a stranger.(*e*)

10. In a case where only the produce of land had been sued for, and the land itself decreed, the whole of the proceedings were quashed by the Sudr Court.(*f*)

11. A title gained by possession cannot be set aside until a superior title has been established.(*g*) The mere fact of possession however in the absence of satisfactory evidence to show how possession was obtained, has been held to confer no title.(*h*)

12. It has been ruled that a party actually in possession of a rent free village, could only be disturbed by the rightful owner, *i. e.* the Government.(*i*)

13. It would be irregular to adjudge property in possession of a Defendant to parties not before the Court.(*j*)

What decree in suit for land should specify.

14. In a suit for land, the position, boundaries, extent, value of estimated annual produce, and the nature of the tenure, (whether Zemindary, Mocassah, Shrotrium, Enam, Meerassy, Jenm, or any other denomination,) should be inserted in the decree.(*k*)

How decree to be passed in suit concerning succession or right of inheritance to real property.

15. In a suit concerning the succession or right of inheritance to a Zemindary, talook, land, house or other real property to which there may be more claimants than one, the Decree should adjudge the property to all the claimants, who, *according to the law of the parties*, whether Hindoo or Mahomedan, may be entitled to share therein.(*l*)

Construction of Sec. 3, Reg. III., 1802.

16. In a suit for damages sustained by a failure of crops in consequence of the fraudulent appropriation by the Defendants of water which the Plaintiff alleged himself entitled to, the Sudr Court held that the Plaintiff should not be required to sue first for the water, and afterwards for damages, inasmuch as under the provisions of Sec. 3, Reg. III., 1802, a suit for damages may be brought only "for the amount in which the Plaintiff may be endamaged."(*m*)

(*e*) D. S. S. A. 11 of 1812.
6 of 1819.
53 of 1851.
58 of 1852.
(*f*) Ibid 6 of 1819.
(*g*) Ibid 9 of 1807.
9 of 1811.
11 of 1824.
(*h*) Ibid 95 of 1851.
(*i*) Ibid 4 of 1810.
(*j*) Ibid 53 of 1851.
(*k*) C. O. 24th August 1840, No. 66.
(*l*) Sec. 19, Reg. II., 1802.
Cl. 2, Sec. 62, Reg. VI., 1816.
(*m*) D. S. S. A. 51 of 1852.

17. To prevent further litigation, the Sudr Court, on one occasion, expressed an opinion as to the right of the Plaintiffs to certain property not actually included in the Plaint, but incidentally referred to in the Pleadings.(n)

When a sum relinquished by Plaintiff may be decreed to him.

18. A sum relinquished by the Plaintiff in the bond sued upon was decreed to him by the Sudr Court, on the ground that the Defendant had violated the terms on which the relinquishment was made, which were, that the balance should be punctually paid in small monthly instalments, and that, if the Defendant failed in any one instalment, the sum remitted should be paid also. The Court remarked that "Bonds containing similar con-"ditions were constantly executed, and that it would be con-"trary to justice and acknowledged practice, as well as de-"structive of all credit and confidence among the community ge-"nerally, if such Bonds were not to be adhered to, and their "terms, if required, enforced."(o)

20. Where a set-off alleged by a Defendant is admitted by the Court, the suit should be dismissed.(p)

21. Where a suit may be based on a set-off pleaded, but disallowed as not proved, in a former action, it should be dismissed under Section 10, Regulation II of 1802.(q)

22. A Decree based entirely upon a promise of payment alleged to have been made subsequent to the filing of the suit, cannot be upheld.(r)

23. Where the Defendant may allege that, by a transaction subsequent to the adjustment of accounts pleaded by the Plaintiff, the balance has been turned in his favor, the Court should decide whether or not such allegation is founded on truth.(s)

24. Where a Rauzeenamah may be admitted by a Court, the Decree in the suit cannot be passed otherwise than in accordance with the terms of such Rauzeenamah.(t)

25. A suit may be adjusted by Rauzeenamah between the Plaintiff and *some* of the Defendants, and may proceed as regards the remaining Defendants.(u)

(n) D. S. U. S. A. 1 of 1820.
(o) Ibid, 36 of 1846.
(p) Ibid, 36 of 1852.
(q) Ibid, 11 of 1854.
(r) Ibid, 12 of 1852.
(s) Ibid, 8 of 1853.
(t) S. U. Pro. 1st May 1837.
(u) S. U. Pro. 10th July 1827.

26. A Court should not allow a Plaintiff to file a Petition withdrawing a suit after a Decree has been passed therein. The proper course is for the parties to file a Rauzcenamah.(*v*)

27. To dispose of a claim on a compromise entered into by the brother of one of the Plaintiffs, without any legal authority from him, would be irregular.(*w*)

28. In adopting a decision of Arbitrators, the grounds of such decision should be set forth in the Court's Decree founded thereon.(*x*)

29. In a Decree awarding maintenance, it should be clearly stated upon what grounds, as arising out of the conduct of the party decreed against, such award is made.(*y*)

Rule for fixing amount of maintenance in decree.

30. Where the widow of a Hindoo is excluded by Law from inheriting her husband's property, the Courts are to fix the amount of maintenance receivable by her from her husband's heir, with reference to the circumstances of the family.(*z*)

31. Where the Plaintiff may set up a title as Grantee, and the evidence show that he was Manager of land granted to a Pagoda, the suit should be dismissed.(*a*)

32. A Court should not award house rent to a Plaintiff on the ground that it had been decreed in two former suits, without calling for evidence as to the actual occupation of the house during the period for which rent may be claimed:(*b*)

33. A Court should not base its decree on a Receipt produced by the Defendant *after* the pleadings are completed and points recorded for proof. The Receipt may, if the Defendant think fit, form the subject of a separate suit, but it cannot receive consideration in disposing of the case then before the Court.(*c*)

34. A summary order is not conclusive against a claim which may become the subject of a regular suit, and a Decree based upon such order is irregular.(*d*)

Punishment for vexatious suits.

35. If a suit instituted in a Zillah, or Subordinate Zillah Court

(*v*) D. S. U. S. A. 47 of 1854.
(*w*) Ibid, 64 of 1851.
(*x*) Ibid, 7 of 1853.
(*y*) Ibid, 81 of 1851.
(*z*) Ibid, 11 of 1827.
(*a*) Ibid, 43 of 1848.
(*b*) Ibid, 11 of 1850.
(*c*) Ibid, 33 of 1851.
(*d*) Ibid, 72 of 1851.

appear to the Judge to be frivolous, vexatious or groundless, he should, besides dismissing the suit with such costs as he may deem it equitable to award against the Plaintiff, fine the Plaintiff in such amount as he may think proper, upon a consideration of the nature of the case and the situation and circumstances in life of the offender, and commit him to close custody until he pays the fine.(*e*)

36. When a second suit may be instituted for the same cause of action, such second suit should be dismissed with costs to be paid by the Plaintiff.(*f*)

Punishment to litigious Pauper Plaintiffs.

37. Whenever a Court may by its decree declare a Pauper suit instituted before it to be vexatious or litigious, it is competent to such Court to adjudge the Pauper Plaintiff to pay a fine not exceeding 200 Rupeees, and be imprisoned until payment be made, provided the time of imprisonment do not exceed six months, at the end of which period or of such shorter period fixed by the Court in commutation of the fine, the pauper should be released; but no sum should be received in payment of the fine until the whole of the fees and costs of suit which may have been decreed against the pauper have been paid.(*g*)

How Moonsiff may punish a litigious Plaintiff.

38. If a suit before a District Moonsiff should appear to him to be vexatious or litigious, he should adjudge suitable costs and damages against the Plaintiff, and insert the same in the decree.(*h*) But the Moonsiff cannot fine a litigious Plaintiff or punish him by imprisonment, as the higher Courts can do.(*i*)

What appeal decree should distinctly state.

39. An appeal decree should distinctly state whether the original decree is affirmed or reversed; and if the latter, the thing adjudged should be precisely defined.(*j*)

40. Where there may not be a confirmation or reversal in full of the original decree, the appeal decree must distinctly declare how much of the lower Conrt's decree is upheld or reversed.(*k*)

41. An Appellate Court should assign its reasons for admitting evidence which has been rejeeted by the lower Court; and

(*e*) Sec. 9, Reg. II., 1802.
(*f*) Ibid.
(*g*) Sec. 8, Reg. VII, 1818.
(*h*) Sec. 37, Reg. VI., 1816.
(*i*) S. U. Dy. 26th June 1835.
(*j*) D. S. S. A. 49 of 1851.
(*k*) R. P. S. U. Cl. 69.

if it discredit, as contradictory, the evidence on which the lower Court relied, it should clearly set forth the point in which it perceives the contradiction.(*l*)

Disposal of cross appeals.

42. When two cross appeals by opposite parties in an original suit are admitted in one case, they must be treated as distinct appeals. One decree may be passed embracing both appeals, or a separate decree on each, at the discretion of the Court.(*m*)

43. But two appeals not strictly cross appeals cannot be disposed of in one decree.(*n*)

(*l*) D. S S A 110 of 1849 and 39 of 1851.

(*m*) C. O 4th February 1836, No 24.

(*n*) D. S. S A. 11 and 49 of 1851.

DECREES.

SECTION II.

FORM OF DECREES.

1. When the parties have been heard, the exhibits received and considered, and the witnesses on both sides examined, the duty of the Judge is to give judgment according to justice and right; and also (subject to the modifications hereafter stated) to order costs to be paid to the party in whose favor the decree may be made.(*o*)

When Court should give judgment.

2. The grounds of every judgment and the evidence on which it is based, as well as the thing adjudged, should be stated in the clearest and most precise language.(*p*)

Language used should be clear and precise.

2. The judgment is embodied in a decree which forms the record of it.(*q*)

4. In framing decrees, care should be taken that the names of the parties and their places in the suit are set forth with distinctness so as to catch the eye readily. The names should be placed in two columns at the head of the decree, those of the Plaintiffs on the left hand, and those of the Defendants on the right. The names should be each on a distinct line and numbered consecutively, the numbers given to supplemental parties being consecutive to those of the primary parties.(*r*)

Rules for framing decrees. Specific [illegible] of names of parties.

5. The abstract of the pleadings will follow in all possible brevity, it being sufficient to show therein the precise matter demanded by the Plaintiff, and how the Defendant has become subject to the demand; also why the Defendant resists the demand, with essentials of sums and dates. The abstract of each Pleading should be in a distinct paragraph.

Abstract of pleadings.

Thus in a suit for recovery on bond, it will suffice to say:

Examples.

(*o*) Sec. 9, Reg. III., 1802.
Sec. 36, Reg. VI., 1816.
(*p*) D. S. S. A. 50 and 63 of 1851.
(*q*) Sec. 1, Act XII., 1843.
(*r*) R. P. S. U Cl. 41.

"(1.) The Plaintiff sues for recovery of Rupees ———— being principal and interest on a bond for Rupees ———— executed by Defendant's father on the ————

(2.) The Defendant denies that his father incurred any debt to Plaintiff, or executed any bond to him. He also denies having inherited property from his father so as to be responsible for his debt."

Or in a suit for land,

"(1.) The Plaintiff sues for recovery of land (enter description and extent thereof, and valuation of produce) mortgaged by him to Defendant on ———— for Rupees ————, stating that after deduction of Rupees ———— being surplus produce appropriated by Defendant, he is prepared to pay him the balance, Rupees ————

(2.) The Defendant answers that the Plaintiff by a deed dated the ———— increased the mortgage on the land to Rupees ————; that from that date the land bore no surplus produce, and that Plaintiff to be entitled to the land must consequently pay him the said sum of Rupees ———— in discharge of the mortgage."(s)

Reply and rejoinder.

6. No notice need be given of the reply and rejoinder, unless matters should appear therein affecting the statements made in the primary Pleadings.(t)

Points.

7. After abstract of the Pleadings, the points in dispute must be entered, as recorded on the first hearing of the cause.(u)

Exhibits and lists of witnesses.

8. Then will follow lists of the documents and witnesses examined on either side. The nature of the documents, the designations of the parties by whom and to whom written, with particulars of sums and dates, must be specified in each instance with brevity. Where the terms and conditions of any document may be in dispute, the entry should be made in greater amplitude, so as to exhibit fully the said matter in dispute. The Plaintiff's documents are to be lettered consecutively, and the Defendant's numbered.(v)

Judgment.

9. The decision come to will then be recorded. It should be introduced with the heading "judgment" written in the middle

(s) R. P. S. U. Cl. 42.
(t) Ibid Cl. 43.
(u) Ibid Cl. 44.
(v) Ibid Cl. 45.

of the line. When objections to jurisdiction &c. may have been raised and decided favorably to the Plaintiff at the preliminary hearing of the suit, such decision should be first recorded in a distinct paragraph. After this, any admissions made on either side at the first hearing of the cause on its merits should be entered, also in a distinct paragraph. The judgment on the points in issue should thereupon be given, each point, when practicable, being treated of in its order and in a distinct paragraph. In the margin, reference should be made to the several points where treated of.(*w*)

Grounds of judgment to be concisely stated.

10. In recording judgment on any subject, the grounds on which the judgment has been arrived at are invariably to be stated. It will not suffice to say that such and such circumstance has been proved, or that such and such a document is considered untrustworthy; the facts sworn to, proving the circumstances, with citation of the witnesses so proving them, should be given, and the blemishes in the document pointed out. Brevity at the same time should be studied as well as lucidity in setting forth the grounds of the judgment.(*x*)

Abstract of evidence not required.

11. The custom found to prevail occasionally in the decrees of the Native judicial officers of making the decree to consist of an abstract of what each witness has said, with a bare declaration at the end that therefore the Plaintiff's claim, or the Defendant's answer, is proved, is strictly interdicted. Such practice indicates a want of exercise of judgment in the case, the decree being a mere mechanical arrangement which any Gomastah might prepare. An abstract of the evidence is in no case needed to the setting forth of the facts proved by the evidence.(*y*)

Costs.

12. The decree will conclude with a specification of the costs.(*z*)

Decree to be returned if not prepared according to above rules.

13. When an Appellate Court may find any decree of a Court below drawn up in a manner essentially at variance with the above rules, and wanting in the brevity and perspicuity which it is their object to secure, the same should be returned to the lower Court with a requisition to prepare a fresh decree, which will be put on the record, not to displace the

(*w*) R. P. S. U. Cl. 46.
(*x*) Ibid Cl. 47.
(*y*) Ibid Cl. 48
(*z*) Ibid Cl. 49

original decree or for issue to the parties, but for convenience of reference, and to compel observance of the rules given.(a)

Mode of inserting costs.

14. Costs of suit should be inserted in decrees as far as practicable in the following order and method :

Stamp duty on institution under Sec. 13., Reg. XIII., 1816.

Fees of Plaintiff's or Appellant's Pleader under Sec. 25., Reg. XIV., 1816.

Value of stamped paper filed by Plaintiff or Appellant.
Value of Stamped paper filed by Defendant or Respondent.
Stamp duties on (No.) Exhibits filed by Plaintiff or Appellant.

Stamp duties on (No.) Exhibits filed by Defendant or Respondent.

Expenses for (No.) witnesses of Plaintiff or Appellant.
Expenses for (No.) witnesses of Defendant or Respondent.
Expenses for serving Processes.
Interest.

And in Appeal cases ; Costs incurred in the lower Court.(b)

Note to follow costs.

15. Below the statement of costs, a note should invariably be entered in English and in the vernacular language of the Court, in the following words and order.

Sealed and signed, (enter date.)
Term of Appeal expires, (enter date.)
Copy of Decree applied for, (enter date.)
Copy ready, (enter date.)
Copy furnished, (enter date.)
Delay not attributable to the party, (enter No. of days.)
Appeal time with reference to Sec. 3, Act XXXV. 1837, will expire, (enter date.) (c)

Subsequent notifications.

16. Then will follow a notification that no private adjustment of the Decree will be allowed, or deemed valid, unless the terms of such adjustment be made a record of the Court, (d) and a further notification that the decree will not be executed after the lapse of 12 years, unless the party applying for execution shews

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(a) R. P. S. U. Cl. 50.
(b) C. O. 6th May 1824.
(c) C. O. 14th June, 1848, No. 114 B.
(d) C. O. 15th August 1837, No. 84.

by clear and positive proof that his application is, on one or other of the grounds specified in Clause 4, Section 18, Regulation II of 1802, excepted from the rule of limitations prescribed in that Section.(*e*)

Particulars at foot of Decree.

17. To enable the revising authorities to judge of the manner in which suits are brought to a close, the following particulars are to be inserted at the foot of every Decree:

The date on which the Plaint or Appeal was filed.
The date on which the Pleadings were closed.
The date of the preliminary hearing.
The date of every subsequent hearing.
The date of the Decree.(*f*)

18. All orders rejecting evidence tendered by the parties should be set forth immediately above the judgment.(*g*)

19. Whenever a native date or term may be used, the corresponding English date and meaning should be stated.(*h*)

20. Paragraphs should be numbered, and each sheet paged.(*i*)

21. The Judge should attest each page with his initials, and also note in his own handwriting on the last sheet, the number of sheets contained in the Decree, attesting the note with his signature.(*j*)

Sealing, signing and dating.

22. The Decree should be sealed with the seal of the Court, and signed by the Judge, and dated on the day on which it may be passed.(*k*)

23. Native Judicial functionaries should sign in full, and always in the same character.(*l*)

When Decree is to be considered as passed.

24. No Decree can be considered as passed till it is read or declared in open Court, and on the day of its being so passed, it is virtually filed of record.(*m*) But no judgment can be declared till the draft of the Decree is ready for transcription.(*n*)

How to declare Decree.

25. The proper course is to declare judgment in open Court by reading a short abstract of the Decree in the native language, which can be prepared in a few minutes by a competent Translator, and for this purpose the draft of the Decree need not be seen by him till immediately before the Court

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(*e*) C. O. 12th September 1851, No. 123.
(*f*) R. P. S. U. Cl. 74.
(*g*) C. O. 23rd January 1851, No. 120.
(*h*) C. O. 29th April 1850, No. 116. D.
(*i*) Ibid.
C. O. 11th February 1837, No. 42.
(*j*) Ibid.
(*k*) Sec. 27, Reg. III, 1802.
(*l*) C. O. 13th Nov. 1843, No. 83.
(*m*) C. O. 9th February 1826.
(*n*) C. O. 18th October 1824.

opens.(o) All such drafts must be in the hand-writing, and bear the signature of the Judge passing the Decree. In order to prevent a knowledge of the intended judgment being made public before the formal declaration of it in Court, neither translations nor copies of the Decrees, are to be made until judgment has been pronounced.(p)

What part of Decree must be written in vernacular language of Judge,

26. So much of a Decree as consists of the points to be decided, the decision thereon, and the reasons for the decision, should be written originally in English, or other vernacular language of the Judge (of whatever grade) by the Judge in his own hand-writing, and signed by him at the time of pronouncing such decision.

translated,

Where the language of the Judge may not be the language commonly used in the Court, the whole of the minute thus recorded,

and incorporated in Decree.

must be accurately translated into the language of the Court, and incorporated in the Decree, being inserted between the close of the judgment and the statement of costs.(q)

27. Without any repeal of the provisions contained in the above para, it has been enacted that Judicial Officers should write their decisions or orders in their own vernacular language, dating and signing the same at the time they are made or passed; the original to be filed with the record or proceedings in the case, and where the original may be in a different language to that ordinarily used in the Conrt, a translation should be incorporated in the Decree, or record of the decision or order.(r)

28. Such decisions or orders need not be written in open Court.(s)

What Courts' decrees to be in English.

29. Decrees passed by the Sudr Court, and Zillah, Subordinate and Assistant Judges, should invariably be written in English.(t)

Uncovenanted Judicial officers cannot declare judgments drawn up under dictation.

30. Principal Sudr Ameens, Sudr Ameens and District Moonsiffs are strictly prohibited from declaring in Court judgments drawn up by their ministerial servants under dictation, and recording their purport in the Diary previous to their preparation in the hand-writing of the functionary passing the same. Any of the abovementioned functionaries resorting to such a practice

Penalty.

will be liable to dismissal from the service.(u)

31. It is the duty of Zillah Judges, from time to time, carefully to ascertain that the above injunction is strictly conformed

(o) C. O. 9th February 1826.
(p) C. O. 18th October 1824.
(q) Act XII, 1843.
S. U. Dy. 15th September 1843.
(r) Sec. 1, Act XXXIII, 1854.
(s) Sec. 3, Ibid.
(t) Cl. 2, Sec. 15, Reg. XV, 1816.
(u) C. O. 20th April 1844, No. 89.

to by functionaries within their jurisdiction, who have authority to pass judgment in regular suits.(v)

Revised Decrees.

32. Revised Decrees made in cases remanded for fresh judgment are to be in all respects as complete in themselves as if they were primary decisions; so that a party taking out a copy of a revised Decree for production as the judgment passed in his case may not be laid under the necessity of also providing himself with a copy of the prior Decree towards elucidating any part of the said judgment.(w) The revised Decree is to re-embody the findings of the primary Decree in order to his own completeness. The form of such re embodiment is to be thus: The primary Decree is to be re-copied: The substance of the order of the remand then to be given, and after that the finding upon that order. Should the remand cancel, in express terms, the decision originally passed, such decision need not be re-embodied in the second Decree.(x)

Appeal Decrees.

33. In framing an Appeal Decree the following rules are to be observed. After setting out the names of the Appellants and Respondents in the manner prescribed for exhibition of the names of parties to original suits, a short statement is to be made, in a distinct paragraph, of the matter decided by the Court below, which the Appellant seeks to have reversed. After this will follow an abstract of the grounds of objection taken to the Decree of the lower Court arranged in numerical order, then the Respondent's answer should be given, and should further evidence have been called for, the grounds for such step must next be entered. Then the point or points to be determined by such evidence, or recapitulation of any point or points entered in the original Decree for the further elucidation of which such evidence may have been required, must be specified. After this, the descriptive lists of the documents filed, and the names of the witnesses, are to be entered in the manner enjoined in respect of Decrees in original suits. Then will follow the judgment given, and the costs.(y) In referring, in the grounds of judgment, to the parties in the suit, they are to receive their appellations of Plaintiffs and Defendants as in the original suit.(z)

(v) C. O. 20th April 1844 No. 89.
(w) S U. Pro. 2d February 1853,
(x) R. P. S. U. Cl. 65.
(y) Ibid Cl. 70.
(z) Ibid Cl. 71.

Copies of appeal decrees passed by Sudr Court to be furnished to Courts below;

34. Authenticated copies of all Appeal Decrees passed by the Sudr Court should be transmitted to the Courts from whose judgment the appeals have been preferred, as well for the information of those Courts, as to enable them duly to execute all such orders as the Sudr Court may issue in such Decrees.(a)

And so, decrees of Appellate Courts in Provinces, to lower Courts.

35. In like manner, attested Appeal Decrees passed by the Appellate Courts in the Provinces should be furnished to the lower Courts, within fifteen days after declaration of the judgment in Court.(b)

Copies of what Decrees to be furnished to Collectors and Board of Revenue.

36. That the quinquennial register of landed property paying revenue to Govenment may be kept complete, the Zillah and Subordinate Zillah Courts are strictly enjoined to transmit to the Collector of the District and to the Board of Revenue, a copy of every Decree that they may pass, or which may be sent to them to be enforced by superior Courts, regarding any zemindary, independent talook, or other land paying revenue immediately to Government, or in any wise concerning the possession of such land. The Judge is to transmit the copy of the Decree within ten days after he may pass, or receive it. The Decree is to be attested with the signature of the Judge and the seal of the Court; and accompanied with a short abstract, specifying the date of the Decree, the names of the pergunnah or purgunnahs, the talook or talooks, the turf or turfs, the village or villages, or the portions of each, which may be decreed, the name or names of the person or persons to whom the lands may be decreed, and if the land be decreed to two or more persons, the share awarded to each of them.(c)

37. The Decrees regarding malgoozary land to be transmitted, as above mentioned, to the Collector of the District and to the Board of Revenue, are such Decrees only as affect the proprietary right in, or possesion of, the land in question.(d)

Abstract Decree to be entered in Diary.

38. An abstract of every Decree passed by the Sudr Court, a Zillah Court, or a Subordinate Zillah Court, containng a succinct statement of the grounds of judgment should, on the day of the promulgation of the Decree, be entered in the *Diary* of the Court.(e)

(a) C. O. 30th April 1818.
(b) C. O. 17th November 1845, No. 100.
(c) Cl. I, Sec. 11. Reg. III., 1802.
(d) Cl. 2, Ibid.
(e) Sec. 2, Act XXXV., 1837.

39. The Decrees of the Zillah, Subordinate, and Assistant Judges, should be forwarded to the Sudr Court in order to their being printed monthly. They should be sent within 10 days of the close of each month to the Register's Office; being transcribed according to the rules hereunder stated.(*f*)

Copies of decrees of all Covenanted Mofussil Judges to be sent to Sudr Courtto be printed monthly.

40 Each Decree should be copied on a separate sheet of foolscap paper, and when more than one sheet may be necessary, the sheets should be carefully tied together.(*g*)

How transcripts to be made.

41. To each Decree a heading in the following form should be prefixed:

FOR ORIGINAL SUITS.

The (enter date.)

PRESENT.

A. B. ———— *Judye.*
Original Suit No. —— of 18—
———————— Plaintiff.

versus.

1. ————————
2. ————————
3. ————————
} Defendants.

FOR APPEALS.

The (enter date.)

PRESENT.

A. B. ———— *Judge.*
No: —— of 18—
Appeal from the decision of ———— *Sudr Ameen of*
———————— *dated* ——— 18—
————Plaintiff, Appellant; or Defendant, Appellant.
————Defendant, Respondent; or Plaintiff, Respondent, (as the case may be.)(*h*)

42. The Decree so forwarded should contain an abstract of the Pleadings as well as the Judgment. In fact, they must be transcripts of the Decrees as placed on the records of the Court; the names of the witnesses, description of documents and the bill

(*f*) S, U, Dy. 23d September 1851.
(*g*) Ibid.
(*h*) Ibid.

of costs alone being excluded. It will be sufficient to state, instead of entering the names of witnesses, &c., "That eight "witnesses were examined for the Plaintiff and ten for Defendant. "The Plaintiff filed five exhibits, and the Defendant three."(i)

43. A list prepared in the following form should be forwarded with the Decrees:(j)

No. on —— Judge's file.	Names of the parties.	Date of decision.

44. Due care must be taken to ensure the perfect accuracy of the copies.(k)

45. When no Decrees have been passed in any month, the circumstance should be reported by the Officer presiding over, or in charge of the Court, on the first of the ensuing month to the Court of Sudr Adawlut.(l)

Monthly average of Decrees to be passed by Courts.

46. The following statement exhibits the monthly average of Decrees on the merits which should be passed by the several Officers presiding over the Courts in the Provinces; a deficiency being, in all cases, satisfactorily accounted for :—

District Moonsiffs,.....	20
Sudr Ameens,.....	20
Principal Sudr Ameens,.....	16
Subordinate Judges,.....	8
Assistant Judges,.....	15
Zillah Judges,.....	8 (m)

47. Two Decrees passed on Rauzeenamahs after points have been recorded are equivalent to one Decree on the merits (n)

(i) S. U. Dy. 14th October 1851.
(j) S. U, Dy. 23d September 1851.
(k) Ibid.
(l) Ibid.
(m) C. O. 20th September 1824 B.
C. O. 28th June, 1834. B.
C. O. 15th October 1834. No, 4.
(n) S. U. Pro. 23d August 1849.

48. District Moonsiffs and Sudr Ameens should every month forward to the Zillah Judge, with the record of the suits decreed by them during the preceding month, the original drafts of the Decrees, in their own hand-writing, in order to ascertaining that they have been prepared in the manner prescribed by Law.(o)

Sudr Ameens and District Moonsiffs must every month forward their draft decrees to Zillah Judge.

49. Zillah Judges when transmitting their quarterly Civil Reports should certify that the Decrees passed by them during the period under review were all written in their own hand-writing.(p)

Zillah Judge to certify to Sudr Court that his decrees were written in his own hand-writing.

50. Where the drafts of Decrees, prepared by a Zillah Judge and neither copied nor translated, were found, upon his demise, to be so imperfect and unintelligible as to be incapable of transcription, the Sudr Court directed that the suits they referred to be replaced on the file, and investigated and determined under the general provisions of the Regulations.(q)

(o) C. O. 20th May 1831.
C. O. 15th May 1846, No. 106.

(p.) C. O. 6th February 1847, No. 108.
(q) S. U. Dy. 5th October 1835.

DECREES.

SECTION III.

COSTS.

General principle of award.

1. In the decree passed by a Court costs should be awarded against the losing party; (r) but the rule is subject to many modifications.

Costs in suits dismissed for default.

2. In Suits or Appeals, dismissed in consequence of the Plaintiff or Appellant failing to proceed therein for 6 weeks, the Court should award to the opposite party the costs incurred by him.(s)

In suits decided on the merits where the Plaintiff's claim may be admitted in full.

3. In a suit decided on the merits, if the whole of the money or property demanded by the Plaintiff or Appellant be decreed to him, a sum equal to the whole of the fees of his Pleader (computed according to the scale contained in para. 13) should be adjudged to the Plaintiff or Appellant, in addition to the other costs which may be awarded to him.(t)

Where the Plaintiff's claim may be only partially admitted.

4. If only a part of the money or property claimed, be decreed to the Plaintiff or Appellant, a sum bearing the same proportion to the money or to the value of the thing decreed, as the fees bear to the demand stated in the Plaint, should be decreed, and added to the costs awarded to the Plaintiff or Appellant.(u)

In suits disposed of otherwise than on the merits.

5. Where costs may be awarded in suits disposed of otherwise than on the merits, the amount to be charged on account of Pleader's fees should be one-fourth of what it would have been in a regular suit decided on the merits.(v)

Costs in dismissed suits generally.

6. In a suit dismissed, whether upon an investigation of the merits or otherwise, the Plaintiff should be charged with the fees of his own Pleader and with those of the Pleader of the opposite party.(w)

Proviso.

7. If, in any instance, the payment of the Pleader's fees according to the above rules, may not appear to be just and

(r) Sec. 9, Reg. III., of 1802.
(s) Sec. 2, Act XXIX., of 1841.
(t) Cl. 1, Sec. 26, Reg. XIV., of 1816.
(u) Cl. 1, Sec. 26, Reg. XIV., of 1816.
(v) Sec. 7, Act I., of 1846.
(w) Cl. 2, Sec. 26, Reg. XIV., of 1816.

equitable, the Courts may exercise their discretion in charging the fees to the parties respectively, in such proportions as may seem proper under all the circumstances of the case.(x)

Costs in suits withdrawn or dismissed without an investigation of the merits.

8. If a suit be withdrawn, or dismissed on default, without an investigation of the merits, before all the requisite pleadings have been filed, the Plaintiff should be charged with one-fourth; if after the requisite pleadings have been filed, with one half the established fee of the Pleader of the Defendant, which he would have received had judgment been given in the suit; the above charge being made in addition to all the admitted costs incurred by the Defendant.(y)

In regular suits adjusted by Razeenamah.

9. In cases adjusted by Razeenamah, the fees of the Pleader and all other costs of suit are payable by the parties in such manner and proportions as may be agreed upon and inserted in the Razeenamah.(z)

In Pauper suits adjusted by Razeenamah.

10. In a Pauper suit adjusted by Razeenamah, the Court should award to the Vakeel such amount of fees as might be considered a reasonable remuneration for the duty performed by him; and should not refer him to a suit to recover his fees.(a)

In a second suit instituted for the same cause of action.

11. If a suit have been instituted in a Court competent to try it, and a second suit be brought before another Court for the same cause of action, the latter suit should be dismissed with all costs against the Plaintiff.(b)

Penalty for instituting such second suit, or for laying a vexatious suit.

12. If a party have commenced a suit in any Zillah or Subordinate Zillah Court, and whilst that suit is depending, or after a decree may be passed in it, the party commence another suit in any other Zillah, or Subordinate Zillah Court, for the same cause; or if a party commence a suit in any Zillah, or Subordinate Zillah Court, which may appear to the Judge of such Court to be frivolous, vexatious or groundless, he should, besides dismissing the suit with such costs as he may deem it equitable to award against the Plaintiff, fine the Plaintiff in such amount as he may think proper.(c)

Scale of Vakeel's Fees in regular suits.

13. In all regular suits instituted, either originally or in appeal, in the Sudr Udalut or any of the lower Courts, the Vakeel,

(x) Cl. 3, Sec. 26, Reg. XIV., of 1816.
(y) Cl. 1, Sec. 31, Reg. XIV., of 1816.
(z) Cl. 2, Sec. 31, Reg. XIV., of 1816.
(a) D. S. S. A. S. 12, of 1852.
(b) Sec. 9, Reg. II., of 1802.
(c) Sec. 9, Reg. II., of 1802.

employed by the respective parties should be allowed for pleading the causes of their clients the following rates of fees:

In suits for money, effects or for other personal property, or for land or other immoveable property of any description, if the amount or value of the claim (estimated according to the provisions of Section 14, Regulation XIII. of 1816,) do not exceed 5,000 Rupees, 5 per cent.

If the amount or value exceed 5,000 Rupees and do not exceed 20,000 Rupees; on 5,000 Rupees as above, and on the remainder two per cent.

If the amount or value exceed 20,000 Rupees and do not exceed 50,000 Rupees; on 20,000 Rupees as above, and on the remainder one per cent.

If the amount or value exceed 50,000 Rupees and do not exceed 80,000 Rupees; on 50,000 Rupees as above, and on the remainder 8 Annas per cent.

If the amount or value exceed 80,000 Rupees, the fee to the Vakeel should be one thousand Rupees; and in no instance should it exceed that sum, however great may be the value or the amount of the suit in which such Vakeel may be employed.(*d*)

Fractions of Rupees to be rejected in calculating Vakeel's Fees.

14. In all the preceding calculations, where the amount or value may be in fractions of Rupees, such fractions should be rejected in calculating the fees thereupon.(*e*)

15. Fees of Vakeels in Soldiers' suits should be regulated by the scale above given.(*f*)

16. Any fees in excess of the rates specified in para. 13 cannot be recognized by the Courts in the item of costs; but a Vakeel is at liberty to institute a suit for the recovery of any excess of fees to which he may consider himself entitled.(*g*)

17. The absence of a Vakalutnamah disentitles a Vakeel to claim fees.(*h*)

Rule for charging Vakeel's Fees in cases where a party may employ two

18. Where a party has employed two or more Vakeels in the same suit, and agrees to pay to each of the Vakeels employed, the full amount of the authorized fee, the opposite party should

(*d*) Cl. 1, Sec. 25, Reg. XIV., of 1816. Cl. 3, Sec. 53, Reg. VI., of 1816
(*e*) Cl. 2, Sec. 25, Reg. XIV., of 1816.
(*f*) Cl. 2, Sec. 5, Reg. VIII., of 1817.
(*g*) S. U. Dy. 7th Jan. 1847. S. U. Pro. 20th Nov. 1848.
(*h*) D. S. S. A. 12 of 1852.

in no case be required to make good more than the fee of one of those Vakeels, or such part of that fee as may be adjudged against him by the Court. The fees of the other Vakeel or Vakeels must be considered as a separate expense to be defrayed exclusively by the party entertaining him or them, and for which he cannot be reimbursed in any case whatever.(*i*)

or more Vakeels in the same suit.

19. But where the parties are more than one on either side of a suit, and employ different Vakeels, each of the Vakeels employed is entitled to his full fee.

And where the parties are more than one and employ different Vakeels.

20. With regard to the persons who should pay these fees, the Court of Sudr Udalut ruled that where the persons on the same side of a suit had not conflicting interests, there was no necessity for their employing more than one Vakeel, and that if the judgment went against the opposite party, he was responsible for the fees of one pleader only on the opposite side, the difference being chargeable to the clients who employed more than one Vakeel; but that where the parties on the same side of a suit had each conflicting interests in it, the employment of different Vakeels was obviously necessary, and that the opposite losing party stood in the same predicament as if he had instituted separate suits against each of them, and was accordingly liable to pay the full fee due to each of the Pleaders employed on the other side.(*j*)

21. The Courts should insert in their Decrees all sums paid or payable, by the parties on account of fees or stamp duties, as well as on account of compensation for the expenses of witnesses, of batta to Peons employed in serving the processes, and of all other costs and expenses of the suit; such costs and expenses being ultimately charged to the parties respectively, in such proportions as the Court may deem equitable.(*k*)

All legal expenses and costs should be inserted in the Decree and charged to the parties respectively in equitable proportions.

22. All expenses which it is optional with parties in suits to incur, and which are not required in order to the effectual prosecution or defence of a suit, do not properly form any portion of the costs adjudicable at the discretion of the Judge, but should be defrayed by the parties respectively subjecting themselves thereto. Of this description are the charges attendant upon the filing of Mookhtearnamahs; upon motions for bringing suits to a hear-

Expenses optional with a party to incur do not form any portion of the costs adjudicable by the Court.

(*i*) Cl. 3, Sec. 30, Reg. XIV., of 1816.
(*j*) C. O. 8th April, 1830.
(*k*) Sec. 27, Reg. XIV., of 1816.

ing out of the order of the file, and upon applications for an early decision when such motions and applications do not rest upon any valid ground; upon motions impugning the testimony of the witnesses of the adverse party whenever it may appear to the Judge that the charges preferred are without foundation; upon applications for copies of proceedings not required to be taken out; upon motions presented under Section 4, Regulation II., of 1811; in all which cases the costs should be borne by the Plaintiff or Defendant according as the motions may be rejected or admitted.(*l*)

23. The expenses consequent on the furnishing of copies of Decrees in Pauper suits should also be charged to the parties for whom they are prepared.(*m*)

Penalty on unstamped documents cannot be included in the costs of suit.

24. The penalty levied on an unstamped document must be considered as a fine for the use of Government, and cannot be included in the costs of suit awarded against either party; but should be levied from the party presenting the document, and transmitted to the Collector to be carried to the account of Government.(*n*)

25. The provisions contained in the foregoing three paras. do not in any degree limit the discretion vested in the Courts by Section 27, Regulation XIV., of 1816, (para. 21,) "to charge the costs of suit," on account of the 'Pleadings,' the filing of Exhibits, and 'summoning witnesses,' 'in such proportions' as they may deem 'equitable.' The provisions of Section 9 of the same Regulation, and of Section 10, Regulation XV. of 1816, afford, if duly attended to, ample security against the intrusion upon the Courts of unnecessary and superfluous matter in these particulars; and such provisions should be strictly observed by the several Courts, in view to the prevention of all needless addition to the expenses of litigation.(*o*)

Costs in Pauper suits.

26. On the conclusion of a Pauper suit, the Court should calculate the whole of the costs which would have been incurred by the Plaintiff on account of stamp duties and other legal expenses, had he not been permitted to sue as a Pauper, and should charge the same in the Decree to the party cast, or to the parties respectively, in equitable proportions.(*p*)

(*l*) C. O. 6th May, 1824.
(*m*) Ibid.
(*n*) Ibid.
(*o*) C. O. 6th May, 1824.
(*p*) Cl. 3, Sec. 7, Reg. VII., of 1818.

27. Where a Pauper may have been fined for instituting a vexatious or litigious suit, no sum should be received in payment of the fine until the whole of the fees and costs of suit which may have been decreed against the Pauper have been paid.(q)

In litigious Pauper suits, fees and costs should be levied before the fine can be received.

28. The Courts should proceed for the recovery of costs decreed against a Pauper by the attachment and sale of any property which may at any time after the passing of the Decree be discovered to belong to such Pauper.(r)

Recovery of costs from a Pauper suitor.

29. In summary appeals to Zillah Judges from orders of the Subordinate Zillah Courts determining objections raised to the valuation of the cause of action, the Zillah Judges should award to the Pleaders such proportion of the established fees, not exceeding one-fourth, as may appear adequate to the service performed, to be paid by the party who misrepresented the cause of action.(s)

30. The Decree of a District Moonsiff should specify the amount of costs or damages payable by the parties respectively.(t)

31. If a suit before a District Moonsiff appear to him to be vexatious or litigious, suitable costs and damages should be adjudged against the Plaintiff, and inserted in the Decree.(u)

Costs & Damages to be adjudged for instituting a vexatious suit before a D. Moonsiff.

32. Suits tried by Village Moonsiffs are exempt from fees, stamp duties and charges of every description, excepting the batta of the Peon entrusted with the sale of property attached in execution of a Decree of a Village Moonsiff, and every other expense attending the sale.(v)

Cost in suits before V. Moonsiffs.

33. The amount of the institution fee and of the batta paid to witnesses in suits before District Punchayets, should be levied from the party cast, by the District Moonsiff.(w)

Costs in suits before D. Punchayets.

34. Suits tried by Village Punchayets are exempt from fees, stamp duties, batta and charges of every description, excepting the cost of the paper or cadjan leaves on which the Proceedings and Decrees may be written, the amount of which should be inserted in the Decree, and levied from the party cast.(x)

In suits before V. Punchayets.

35. An authorized Vakeel presenting a Petition of Appeal

(q) Sec. 8, Reg. VII., of 1816.
(r) Cl. 1, Sec. 9, Reg. VII., of 1818.
(s) Cl. 3, Sec. 4, Reg. XII., of 1809.
(t) Sec. 37, Reg. VI., of 1816.
(u) Ibid.
(v) Sec. 32, Reg. VI., of 1816.
(w) Cl. 4, Sec. 19, Reg. VII., of 1816. Cl. 3, Sec. 20, Reg. VII., of 1816.
(x) Sec. 13, Reg. V., of 1816.

from, or a Petition praying execution of, a decision of a Punchayet is entitled to a fee of 4 annas, and no more.(y)

In suits against Public Officers.

36. In suits against Public Officers, if the redress sought for by the Plaint be granted under orders from the superior authority, the Court in which the suit may have been filed, should certify the amount of costs incurred by the Plaintiff in the institution of his suit, and dismiss the cause from the file on payment being made of such costs, or on the Plaintiff's filing a Razeenamah in the usual form.(z) The Plaintiff will not however be entitled to receive the said costs, should he fail to prove to the satisfaction of the Court, on being called upon to do so, that before instituting the suit he applied to the Public Officer for the redress which by his Plaint he sought to obtain, and that his application was refused.(a)

In suits before Military Tribunals, under Reg. VII. 1832.

37. In suits tried by Military Tribunals under Regulation VII. of 1832, the sums paid on account of batta to witnesses, should invariably be recovered as the costs due from the parties, the party cast paying the same, in the proportion which the sum decreed against him may bear to the sum sued for.(b)

38. The sale of property to recover costs due to parties under an original Decree pending appeal, is illegal.(c)

(y) Cl. 5, Sec. 11, Reg. V., of 1816.
Cl. 6, Sec. 11, Reg. VII, of 1816.
Sec. 17, Reg. V., of 1816.
Sec. 17, Reg. VII., of 1816.

(z) Cl. 1, Sec. 4, Reg. I., of 1823.
(a) Cl. 2, Sec. 4, Reg. I., of 1823.
(b) Sec. 10, Reg. VII., of 1832.
(c) C. O. 22d January, 1835.

DECREES.

SECTION IV.

COPIES TO BE FURNISHED TO PARTIES.

1. Under Sec. 2, Act XXXV., 1837, a party in a suit decided by a Court presided over by a European judicial officer, can demand only a *translation* of the *abstract* of the decree as entered in the Diary of the Court, or a complete *copy* of the decree *in English* on his furnishing the prescribed stamped paper; but where a party may request to be furnished, at his own expense with a *translation* of the *entire* decree, it should be furnished (on his depositing in Court the probable cost of the same) at the least possible charge at which it can be prepared by a hired translator; and having been completed, it should be compared and certified by the Translator of the Court.(*d*)

2. The expense of such translations should, in no case, exceed one Rupee for every 300 words of the original; but should be fixed within that maximum rate at such rate as local circumstances, or the occasion, may appear to be proper.(*e*)

3. Authenticated copies of decrees cannot be furnished by any Court of a higher jurisdiction than a district Moonsiff's, to any party, for any purpose whatever, except on stamped paper.(*f*)

4. When a district Moonsiff has passed his decree in a suit, he should cause two copies of it to be prepared (on plain paper) and after attesting them with his seal and signature, should, within one week from the date of the decree, tender the said copies, in open Court, to the Plaintiff and Defendant, or to their Vakeels respectively. The Moonsiff should endorse on the copies the date in which they were so tendered to the parties, and if either or both of the parties should fail to attend, or refuse to receive the copies, he should certify the same on the back of the copies.(*g*)

(*d*) C. O. 29th Oct. 1838. No. 55.
(*e*) C. O. 16th June, 1828.
(*f*) C. O. 6th May, 1824.
(*g*) Cl. 1, Sec. 28, Reg. VI., 1816.
Sec. 39, Reg. VI., 1816.

DECREES.

SECTION V.

EXECUTION OF DECREES.

Petition for execution.

1. A Decree-holder desirous of obtaining the enforcement of the Decree should appear, either in person or by Vakeel, before the Court which pronounced it, and present a Petition praying that it may be carried into execution.(*h*)

Stamp.

2. The Petition must be written on stamped paper of the value prescribed by Section 20, Regulation XIII., 1816, if presented to a higher Court than a District Moonsiff's; but if to a District Moonsiff's Court, on plain paper.(*i*)

What the Petition should state.

3. The Petition should state the number of the suit, the names of the parties, the date and substance of the Decree, whether any appeal has been preferred or admitted from the decision, and whether any and what adjustment of the matter in dispute has been made between the parties subsequently to the Decree. It should further contain a statement of the specific amount due to the Petitioner under the Decree, whether on account of costs of suit or otherwise, and the name of the individual or individuals against whom the enforcement of the Decree is solicited.(*j*)

Court should compare Petition with Decree.

4. The Court, after causing the purport of the petition to be compared with the Decree contained in the original record of the suit, should proceed to execution.(*k*)

When notice should issue to opposite party, requiring him to assign grounds of non-liability, if any.

5. If the suit was tried *exparte*, or if an interval of more than one year elapsed between the date of the Decree and the application; or if the enforcement of it be solicited against individuals being heirs or representatives of the original parties, or against one only of several individuals equally affected by the Decree; or if there be reason to believe that the matter in dispute was adjusted by the parties subsequently to the Decree,

(*h*) Cl. 5, Sec. 14, Reg. XV., 1816. Sec. 45, Reg. VI., 1816.

(*i*) Cl. 5, Sec. 14, Reg. XV., 1816. Sec. 29, Reg. VI, 1816.

(*j*) Cl. 6, Sec. 14, Reg. XV., 1816. Sec. 45, Reg. VI., 1816.

(*k*) Cl. 7, Sec. 14, Reg. XV., 1816.

either by voluntary surrender of the thing adjudged, or by payment of the sum decreed, either in whole or in part, by instalments or otherwise, it is competent to the Court, instead of proceeding to the immediate enforcement of the Decree, to issue a notice to the party against whom execution may be sued out, requiring him to show cause within a limited period why the Decree should not be executed against him. If, upon such notice, the party do not attend in person or by Vakeel, or do not show sufficient cause why the decree should not be forthwith executed, an order of execution should pass against him in the usual manner. If he do show cause, the Court will make such order as may appear just and proper under the circumstances.(*l*)

Private adjustment of a Decree not admissible, unless recorded in Court.

6. But no private adjustment of a decree can be allowed, or deemed valid in the several Courts, unless the terms of such adjustment are previously and reciprocally declared by all the parties interested therein, and made a record of the Court, with their unanimous consent.(*m*)

Execution after 12 years from date of Decree.

7. No decree can be executed after the lapse of twelve years from the date of its being passed, unless the party applying for execution shows by clear and positive proof, that his application is, on one or other of the grounds specified in Cl. 4, Sec. 18, Reg. II., 1802, excepted from the general rule of limitations prescribed in that Section.(*n*)

8. The date of passing the decree means, for the purpose of execution, the date of the decree of the Court of first instance, if there has been no appeal; and the date of the decree of the Court of ultimate appeal, if there has been an appeal.

Execution in the Mofussil of a Decree of the Supreme Court;

9. The Sheriff of Madras cannot call on a Judge in the Provinces to act ministerially in giving possession of immoveable property situated within his jurisdiction and sold under a decree of the Supreme Court. The Supreme Court may direct such sale, but the purchaser of the right, title, and interest of the alleged owner, must apply in regular manner to the Judge, and observe the same forms as is usual in similar cases.(*o*)

And of a Decree of a Court of a Native State.

10. In the event of an application being made to a Zillah Court for the enforcement of a Decree passed by the proper

(*l*) Cl. 8, Sec. 14, Reg. XV., 1816.
(*m*) C. O. 15th August 1837, No. 48.
(*n*) C. O. 12th Sept. 1851, No. 123.
(*o*) C. O. 10th April 1827.

tribunal of a Native State, an authenticated copy of the Decree being of course produced, nothing further will be necessary than to call upon the party against whom it may have been passed, to show cause why it should not be executed against him; and, if no sufficient cause be shown, to proceed to the execution of it, as in the case of one of its own Decrees.(*p*)

Reference of applications from higher Court to lower.

11. Zillah Judges may refer the enforcement of Decrees of the Sudr Adawlut, and of their own Courts, to the Subordinate Judges and Principal Sudr Ameens of their Zillahs respectively.(*q*)

12. District Moonsiffs may be employed by Zillah Judges, Subordinate Judges, and Principal Sudr Ameens in executing Decrees, regular or summary, passed by the latter authorities, or by Sudr Ameens.(*r*)

General mode of execution.

13. If the decree to be enforced by a Court be for real property, it must be executed by causing possession of it to be delivered to the party to whom it may be decreed. If it be for personal property, or for a sum of money, it must be carried into effect by causing the specific thing to be delivered, or the value of it; or the sum of money decreed, to be levied by the public sale of a sufficient portion, or, if necessary, the whole of the lands, houses and all effects, real or personal, belonging to the debtor; or by the attachment of his person; or, if necessary, both by the sale of his property and the attachment of his person.(*s*)

Execution in favor of transferree.

14. Where the original holder of a decree may transfer it to another party, he should certify to the Court in person or by mookhtear specially appointed, either verbally or by petition, his having made the transfer. The name of the transferree should then be inserted in the place of that of the original holder in the executing process.(*t*)

How payment of monthly maintenance decreed may be ensured.

15. When maintenance at a certain monthly amount is decreed to a party, and it has been necessary several times to issue process for the amount, on the failure of the proper party to pay it, the Court may take security or attach property, or use other means *beforehand*, to ensure the due payments being made.(*u*)

(*p*) C. O. 28th December 1809, B.
(*q*) Sec. 14, Act VII., 1843.
(*r*) Cl. 2, Sec. 17, Act VII., 1843. Sec. 60 and 61, Reg. VI., 1816.
(*s*) Sec. 9, Reg. III., 1802. Sec. 46, Reg. VI., 1816.
(*t*) C. O. 10th June 1845, No. 94, B.
(*u*) C. O. 16th November 1829.

Enforcement of Decree without application.

16. In suits in which a party may have been allowed to plead in *formâ pauperis*, as well as in suits in which the Courts may have to recover the costs which may be due to Government, they should proceed without any application from the parties, to enforce the execution of the judgment so far as relates to the costs.(*v*)

17. The maintenance decreed to a Hindoo widow was declared by the Sudr Court not to be liable to attachment for the costs due by her to Government, on that portion of her claim which was disallowed.(*w*)

18. Where the Defendants in a suit were directed in the decree to fill up a well illegally dug by them on the premises adjudged to the Plaintiff, and they refused to do so, the Sudr Court held that it was competent to the Court which passed the decree to cause the well to be filled up, and to collect from the Defendants the amount of the expenses attending the measure.(*x*)

Detailed Rules of execution.

19. In order to ensure uniformity in, and to facilitate, the execution of Decrees, the Court of Sudr Udalut laid down certain general rules, which are here set forth in the words of their Circular Instructions.(*y*) The Court in issuing the rules remarked that "in one Zillah alone, Chingleput, this branch of duty was "disposed of without arrears. The principle there followed out "was to give the debtor a strong inducement to throw no im-"pediments in the way of the execution, but, on the contrary, to "facilitate the same, as far as in him laid, by holding his person "in custody until the execution was effected. The consequence "was that debtors ordinarily found the means of producing the "sums in which they stood indebted when demand was made upon "them, and the returns of the Court exhibited no application for "execution in arrear." The Court of Sudr Udalut were satisfied that "attention to this principle would be productive of the "like effects in the other Zillahs;" and accordingly directed that

Real property to be delivered.

(1.) When real property, or moveable has to be transferred under Decrees, the Courts will issue process to have this effected by a given day.

(*v*) Cl. 9, Sec. 14, Reg. XV., 1816.
(*w*) S. U. Pro. 9th March 1837.
(*x*) S. U. Dy. 5th January 1837.
(*y*) S. U. Pro. 31st May 1854.

Issue of warrant of arrest.

(2.) When payment in money has to be made, the Courts will issue warrants for the production of such money before them by a given day, or else of the person indebted in the same.

Procedure, if debtor be not found.

(3.) When the judgment debtor is not to be found, the Peon entrusted with the warrant is to report the same by letter to the Court, and is to affix on the debtor's usual place of abode, if he has one, otherwise on the village Choultry, an Istearnamah in the form *A*. A copy of this Istearnamah signed by the Judge is to be given to the Peon for the purpose, when the warrant is delivered to him.

If he be not apprehended within two months, his property may be attached for sale.

(4.) At the end of two months, should the debtor still continue absent from his Village, the Court, on the request of the judgment creditor, may attach and sell any property of the debtor's that may be pointed out as available for the decree amount. The peons in charge of the warrant as provided in Clause 3, are however still to remain in the debtor's Village until his arrest is secured, or the decree amount and all costs for collection recovered.

Period for executing processes.

(5.) The period fixed for return of the processes particularized in Clauses 1 and 2 is not to exceed *one month*, and should not be extended to suit the convenience of the debtors, save upon special grounds.

(6.) The return of these and all other processes that may be issued is to be exacted rigidly upon the days fixed.

Production of debtor in Court. Procedure thereon.

(7.) The judgment debtor, upon his arrival before the Court, if unable to come to terms with his judgment creditor, is to be required to point out property available for satisfaction of the debt, failing which, he is to be lodged in the jail.

(8.) If the debtor be willing to point out available property he is to be permitted to do so, being nevertheless kept under charge of a Peon until such time as he may have adjusted the demand against him, or been committed to Jail by order of the Court.

When application may be struck off.

(9.) The Court is to strike off the application for execution of the decree if the judgment creditor fail within twenty-four hours to pay the monthly allowance required by Sec. 10, Reg. III., 1802, for the support of the debtor while in Jail, or to advance the requisite batta to Peons which any of the above forms of procedure in execution of the decree may render necessary.

(10.) Should claims be preferred against the property pointed out by the debtor as available for satisfaction of the decree, the Court is to release such property without investigation of such claims.

When attached property may be released without enquiry.

(11.) Claims upon property pointed out by the creditor, or such claims upon property pointed out by the debtor as the creditor may desire upon special grounds to be investigated, shall be disposed of upon investigation; provided that the creditor may have omitted no step required of him to bring about the arrest of the debtor and to hold his person in custody.

What claims should be investigated.

(12.) In investigating such claims, the Court is to fix a day for the hearing thereof, taking due care that means be afforded to the parties to produce, within the said period, the evidence they may have to offer, and is not to adjourn the hearing of the case but for special grounds, on the occurrence of which a new day for hearing and determining the claim is to be appointed.

Hearing of claims.

(13.) The time ordinarily to be given for production of claims on attached property shall be one month; and when the sale of property may be determined on, fifteen days notice of the sale is to be given. On the expiration of these periods, the Courts are to see that the processes contingent thereon are forthwith carried out.

Time for producing claims. Notice of sale.

(14.) Monthly returns according to the form *B* are to be rendered to the Civil Courts by the Courts subordinate thereto, showing the dates on which each step towards execution of Decrees may be taken; and the Civil Judges are to notice all needless delays as well as to obviate any in the execution of their own processes. These returns are to embrace applications when disposed of, but not such as are under process towards disposal.

Monthly returns of Decrees executed.

FORMS.

A

ISTEARNAMAH.

In Original Suit No.—— *of* 18——

Plaintiff A—— Defendant B——

Whereas these are to inform you, B, that in execution of the above Decree, a warrant to recover from you Rs..... has been delivered to (enter Peon's name) and that until such amount has been defrayed by you the aforesaid (enter name) is

to remain in your village. And you are hereby further informed that one month from the date of this Notice, a second Peon will be deputed by the Court to proceed to your Village, and to remain there until due payment be made by you of the amount in question.

The batta to be paid by you for each Peon is Rupees 5 per mensem.

B

EXECUTION OF DECREES.

In Suit No.——— *of* 18——

Execution applied for.....		1st May 1854.
Warrant of execution issued.....		2d do.
Return made by production of person of debtor.....		20th do.
Property attached.....		25th do.
Claims on do. received.....	(No. 1.)	10th June 1854.
	(No. 2.)	10th do.
	(No. 3.)	24th do.
Dates fixed for hearing the said claims.....	(No. 1.)	24th June 1854.
	(No. 2.)	30th do.
	(No. 3.)	10th July 1854.
The said claims disposed of.....	(No. 1.)	24th June 1854.
	(No. 2.)	30th do.
It being shown that certain of claimant's evidence could not be adduced by the appointed day, hearing of No. 3, postponed to....		15th July 1854.
The said claim disposed of.....		17th do.
Sale of property ordered.....		17th do.
Sale effected.....		1st Aug. 1854.
Proceeds paid over to Plaintiff and execution completed.....		7th do.

In Suit No.——— *of* 18——

Execution moved for.....	1st Aug. 1854.
Warrant of execution issued.....	2d do.
Return made by production of sum adjudged.....	10th do.

Peon's Batta to be deposited in advance.

20. On an application being made for the issue of a warrant for the apprehension of a judgment debtor, the creditor should

be required to deposit the prescribed amount of batta (Rs. 5) in advance, unless the sum for which the warrant is issued be less than Rupees 20, in which case the enforcement of such a rule would be attended with inconvenience.(z)

Amount of subsistence allowance. To whom and when payable.

21. The allowance referred to in clause 9 of the foregoing rules should consist of a sum sufficient to provide for the subsistence of the Defendant for one month from the date of his commitment to Jail. The allowance is not to exceed four annas, nor be less than one anna per day, being regulated according to the rank and situation in life of the Defendant, and the circumstances of the Plaintiff. The allowance is payable to the Nazir of the Zillah Court, who is to give monthly receipts for it to the Plaintiff dated on the day on which the money may be paid. The first payment is to be made immediately upon the confinement of the Defendant, and every subsequent payment at the expiration of the next and following month, calculating from the date of the Defendant's confinement.(a)

Omission or refusal of payment to be reported by Nazir. Procedure upon such report.

22. If the Plaintiff neglect or refuse to pay the above allowance upon its becoming due, the Nazir is to report the omission or refusal in writing, under his signature, to the Judge, who will, thereupon, cause it to be notified to the Plaintiff by a writing in the language of the district, that, if he do not within one month from the date of the notice, pay the sums in arrear together with the allowance for one month in advance, the Defendant will be released. If the Plaintiff fail to make the payments required by the notice, the Court should accordingly discharge the Defendant from custody.(b)

Plaintiffs are not to maintain Defendants confined for contempt of Court.

23. Plaintiffs are not to be required to pay for the subsistence of Defendants committed to custody for disobedience to an order of Court.(c)

Subsistence money recoverable by creditor; but debtor not to be confined on account of such repayment only.

24. A repayment of the subsistence money paid by a Plaintiff is to be made in common with the reimbursement of other costs of suit and process, when any property may be forthcoming from which the amount can be levied. But where no property can be pointed out for the reimbursement of the subsistence money, the Defendant is not to be detained in custody for the repayment of such money only.(d)

(z) S. U. Pro. 15th, December 1854.
(a) Sec. 10, Reg. III., 1802.
(b) Ibid.
(c) Ibid.
(d) Sec. 12, Reg. II., 1811.

Parties should not ordinarily be confined for small debts.

25. The Sudr Court have ruled that imprisonment for debt of such a trifling amount as 14, 25, or 28 Rupees is not contemplated by the Legislature, unless where there has been gross fraud.(e)

Satisfaction of Decree by instalments.

26. The Courts cannot grant indulgence of time in the satisfaction of a final judgment, when property from which it can be satisfied (whether belonging to the judgment debtor or to his sureties) may be forthcoming; unless the decree-holder consents to waive his right of immediate enforcement, under an engagement for gradual payment or otherwise, or unless a short postponement of the sale of property may, under any particular circumstances, appear just.(f)

27. But when no property is pointed out from which the judgment can be enforced, and the party against whom it is passed, or his surety, if he have given any, is willing to engage (under sufficient malzaminy or hazirzaminy security, as one or the other may be tendered or required) for the liquidation of the amount due, by instalments, within such period as the Court passing the final decree or entrusted with the execution of it may deem reasonable, it is competent to the Court by which the final judgment is given, or to any superior Court revising the proceedings of an inferior one, to accept the engagement so offered, and to cause execution of the decree in conformity therewith, so long as the conditions of it be duly fulfilled.(g)

Prisoner to be released, and not to be again arrested unless on failure to pay the stipulated instalments.

28. In such cases, if the person delivering the accepted engagement have been taken into custody, he is to be immediately discharged and is not liable to further arrest in execution of the same judgment, except on failure to perform the terms of his engagement; nor is any interest chargeable in such instances, beyond what may be provided for in the engagement.(h)

Insolvency Rules.

29. For the relief of insolvent debtors and their sureties who may be in confinement for the satisfaction of decrees of the Courts, and may have no means of discharging the amount demandable from them, by instalments or otherwise, the Court of Sudr Udalut and the Zillah and Subordinate Zillah Courts are empowered, on receiving from the person confined, in such cases, a statement upon oath or solemn affirmation, containing a full and fair disclosure of all property belonging to him, whether in lands, money or

Prisoner may give a statement of property on oath.

(e) S. U. Dy. 23d July 1834, 17th May 1837.
(f) Sec. 10, Reg. II., 1811.
(g) Ibid.
(h) Ibid.

effects, or of whatever description; and whether held in his own name, or in the names of any other persons, or jointly with others, to cause enquiry to be made for the purpose of ascertaining the truth of such statement, or the validity of any objections thereto which may be offered by the confining creditor.(*i*)

Judge to enquire into truth of statement or validity of objections thereto.

30. If the result of the enquiry satisfy the Court that the said statement of property is true and faithful, and that the person confined possesses no other means of discharging the amount demandable from him, and the property included in the statement, or such part thereof as the Court may deem it proper to sell in satisfaction of the judgment passed, shall be given up for sale; the Court on receiving such property, may cause it to be sold in the mode prescribed by the Regulations, and may order the release of the person in confinement, either with or without hazirzamin security for his appearance when required.(*j*)

Property surrendered to be sold; and prisoner may be released.

31. By these rules, however, it is intended to grant relief in cases of real inability and fair dealing only, and they do not entitle any debtor or surety to be released without full satisfaction of the judgment passed against him, if he should be guilty of any fraudulent concealment of property, or of any manifest fraud or misdemeanor, which may appear to the Court to render him an improper object of this relief.(*k*)

Prisoner not to be released if guilty of fraudulent concealment of property, or of misdemeanor.

32. Nor will release from confinement, in any instance, prevent the creditor from causing the released party to be again confined until the judgment be fully satisfied, upon proving to the Court that such party had, at the time of his discharge, fraudulently concealed property belonging to, and known to have been possessed by him, either in his own name or in the names of others in his behalf; or from bringing to sale, by application to the Court, in full payment of the sum adjudged to be due to him, any property subsequently possessed by the party released.(*l*)

A released debtor may be again arrested, and his property sold.

33. All proceedings held, and orders passed, by the Subordinate Zillah Courts under the discretion vested in them by the above provisions, will, on representation of the parties affected thereby, to the Zillah Courts, be open to the revision and determination of those Courts; and in like manner, all orders

Orders passed by the Courts subject to revision by higher Court.

(*i*) Sec. 11, Reg. II., 1811.
(*j*) Ibid.
(*k*) Ibid.
(*l*) Ibid.

passed by the latter Courts, will be open to the final decision of the Sudr Court.(*m*)

Procedure in cases where property may have been attached before Decree.

34. Where property has been already attached, it is the duty of the Judge, upon the decision of the suit, to pass such order relative to the attached property as may be just, and conformable with the judgment given in the cause. If the decree be against the Defendant, all right and interest possessed by him in the attached property (saving arrears of rent or revenue due from land, and any other bonâ fide claim which may be entitled to satisfaction in preference to the decree) should be held answerable for the execution of the judgment. But if the Plaintiff's claim be dismissed, or be not, in any considerable proportion, established against the Defendant, all expense and loss to the Defendant which may arise from the attachment of his property in consequence of such claim, should be reimbursed to him by the Plaintiff, as part of the costs of the suit.(*n*)

Property to satisfy Decree should not be altogether left for designation by party cast.

35. The items of property available for the satisfaction of a judgment are not to be altogether left for designation by the Defendant or party cast, but are liable to sequestration, if the functionary directing the execution, be satisfied, on information laid before him, that there is reasonable probability of the property belonging to the person against whom execution is sought.(*o*)

What cannot be attached and sold.

36. The grants and emoluments referred to in Regulations IV and VI., 1831, and Acts XXXI., 1836, and VI., 1849, are not liable to attachment in satisfaction of a decree of Court.

37. The emoluments of the office of Curnum cannot be sold in satisfaction of decrees.(*p*)

38. No person can be sold as a slave in satisfaction of a decree.(*q*)

Attached property found to be mortgaged may be sold.

39. When property is attached in execution of a decree in favor of a party, and is found to be mortgaged or hypothecated in a valid manner to another party, either for a specified term, or indefinitely till the amount due to the latter party is paid; if there be reason to believe that the said property is worth more than will suffice to pay the debt for which it is mort-

(*m*) Sec. 11, Reg. II., 1811.
(*n*) Cl. 3, Sec. 5, Reg. II., 1811.
(*o*) S. U. Prg. 8th February, 1845.
(*p*) C. O. 30th August 1851, No. 122.
(*q*) Sec. 1, Act V., 1843.

gaged or hypothecated, it is competent to the Court to have it sold, and pay off, with the proceeds, first, the mortgage or hypothecation, and then, as far as the proceeds will go, the amount due under the decree.(r)

When the sale will not affect the mortgagee's interests.

40. But this rule refers solely to mortgages, where the property remains in the hands of the mortgager, and the mortgagee without obtaining possession of it, has only a lien upon it. In such cases, it is clear that his interests are fully secured by its sale at any period, and the repayment to him, of the amount advanced, with the stipulated interest. Where however an advance on mortgage is made on condition of putting the property for a defined period, into the possession of the mortgagee, and is combined with his enjoyment of the usufruct, a sale, prior to the period specified in the deed of mortgage would be a breach of its conditions, and might prove a serious detriment to the mortgagee, as he would have regulated his advances upon a consideration of the benefit he would derive from the transfer of the property to his possession. Cases of this nature must be dealt with on their own merits, without reference to the rule in question.(s)

When it will operate detrimentally to him.

Collector's objections to be ascertained before putting up land for sale.

41. Whenever the sale of land, of whatever description, is contemplated by the Courts in execution of decrees, they should, immediately upon the order of attachment being made, direct the Government Vakeel to bring the circumstance to the notice of the Collector of the District, in order that that Officer may have an opportunity of offering any objections to the measure, which the interests of Government may seem to require.(t)

42. The Courts will, on such occasion notify to the Collector, the purpose for which the attachment is made, and the date on which the land will be offered for sale. The Collector will offer his objections, if he have any, before such date, and the Courts will dispose of all such objections in conformity with the provisions of the Regulations.(u)

Nature of enquiry into claims to attached property.

43. The enquiry into claims preferred to attached property should be a summary one by means of documents and witnesses, and a summary decision should be passed releasing or selling the property as the Court may determine.(v)

(r) C. O. 16th November 1829.
(s) C. O. 30th October 1834, No. 6.
(t) C. O. 15th February 1847, No. 110.
(u) Ibid.
(v) C. O. 23d February 1831.

44. Order of priority in debts as to title to liquidation stands thus :

1st. Mortgages.
2d. Judgments or Decrees.
3d. Bonds.
4th. Simple Debts.

Cases however may arise in which equity will suggest a departure from any definite rule.(*w*)

Appeal time to be allowed where claims may be rejected.

45. An appeal lies to the proper superior Court from summary decisions on claims to property attached in execution of decrees,(*x*) and the Court rejecting such claims should always, before proceeding to sale, allow the claimants time to appeal.(*y*)

The same rule of limitation as exists regarding the admission of a regular appeal applies to appeals from all such interlocutory orders.(*z*)

46. A summary enquiry and decision of the above nature will not preclude any party concerned from bringing a regular suit for the same cause of action.(*a*)

Bill of Sale.

47. After the completion of sale the Courts will grant a bill of sale for property sold to the purchaser.(*b*)

Sale cannot be annulled upon summary enquiry.
How claimants after sale should proceed.

48. The Courts are not competent to annul a sale of landed property regularly made, on a summary investigation of claims set up to the property sold. The only mode of recovery left open to claimants under such circumstances is the institution of a regular suit, and this at any period, subject of course to the 12 years rule of limitation. The purchaser has obtained an apparent right of possession of which he cannot be divested without a regular proceeding at law. The suit should be against the party in possession, who, if ousted by the result of it, will also have his action for the recovery of the purchase money and damages, as the case may be. Against whom this action should be brought, must be determined by the circumstances of the case.(*c*)

(*w*) S. U. Pro. 4th July 1845.
(*x*) C. O. 23d February 1831.
(*y*) C. O. 6th Feb. 1837, No. 21, B.
(*z*) C. O. 6th January 1836, No. 23.
(*a*) C. O. 23d February 1831.
(*b*) C. O. 16th April 1850, No. 116, B.
(*c*) C. O. 11th October 1827.

49. The proceeds of sale, if not paid over when the claim to the property sold is preferred, should be held in deposit to abide the issue of the suit; when, if the claim be established, they will be available in satisfaction of any claim that the real owner may make good, beyond the bare recovery of his property; and the supposed owner will still be liable for the amount of the decree in satisfaction of which the property was erroneously sold.(*d*)

Proceeds to be held in deposit, if not paid away when claim was preferred.

50. But the foregoing rule referring claimants to property sold, to a regular suit does not refer to fraudulent sales. A sale if proved, on a summary enquiry, to have been fraudulently conducted, can be annulled by a Court.(*e*)

Fraudulent sales may be cancelled summarily.

51. Any person setting up a fictitious claim to property attached in satisfaction of a decree is punishable by the Courts by a fine not exceeding 200 Rupees, and by being kept in custody until the fine be paid; (*f*) but no such person can be kept in custody for a term exceeding two months.(*g*) The amount of fine is to be regulated according to the situation and circumstance in life of the offender.(*h*)

Punishment for fictitious claims.

52. The Court of Sudr Udalut have ruled that Curnums may be fined by the Courts under Section 26, Regulation III., 1802, for refusing to attend at the attachment of property in satisfaction of decrees, and for refusing to make out the usual lists of property, when required by the Court Peons.(*i*)

Curnums may be fined by Courts executing Decrees.

53. The District Moonsiffs should keep Registers of all judicial sales, specifying the day of sale, the particulars of property sold, its amount, and the name and residence of the purchaser.(*j*)

District Moonsiffs to keep sale Registers.

54. Resistance to the sale or transfer of property attached in execution of a decree passed by a District Moonsiff is to be considered a breach of the peace, and is liable to be punished as such.(*k*) A person was sentenced by a Criminal Court to two months' imprisonment with labor, for having threatened a Peon of a District Moonsiff's Court, who had repaired to his house agreeably to a warrant which the Moonsiff had issued against him for attachment, opposing the attachment being made and de-

Resistance to process punishable, as a breach of the peace.

(*d*) C. O. 11th October 1827.
(*e*) S. U. Pro. 28th Aug. 1837.
(*f*) Sec. 2, Reg. I., 1832.
S. U. Pro. 12th May 1846.
(*g*) Act VI., 1836.
(*h*) Sec. 22, Reg. III., 1802.
(*i*) S. U. Pro. 29th March 1837.
(*j*) Cl. 2, Sec. 48, Reg. VI., 1816.
(*k*) Sec. 40, Reg. VI., 1816.

claring that he would cut the Peon if he attempted to go in. But the Foujdary Court observed, that a reference should have been made to the Mahomedan Law as to the liability of the prisoner to punishment under it, for the offence proved against him.(*l*)

55. In execution of a decree of a District Moonsiff, the house of the Defendants was attached. They however locked up the house and absconded. A Proclamation was issued, notifying that unless, in 30 days, they satisfy the Plaintiff, the doors of the house will be broken open, and the property in it sold. The Sudr Court held that, after this Proclamation, the lower Court was competent to order the doors of the house to be broken open, and the property found therein to be sold, if the Plaintiff had petitioned for such sale, and pointed out, previous to the sale, the property as that of the Defendants, and if the Court had invited parties to prefer claims thereto, and investigated them.(*m*)

56. The various causes assigned for non-execution of decrees may generally be classed as follows:

1.	Warrant returned,	"No effects."
2.	do.	"No further effects."
3.	do.	"Parties not found."
4.	do.	"Creditors not proceeding."
5.	do.	"Parties agreed."
6.	do.	"No purchasers."
7.	do.	"Other claimants."
8.	Sale ordered.	
9.	Property attached waiting order.	
10.	Process not issued.	

57. In the first six cases, no further proceedings can be adopted towards the execution of the decree without renewed exertions on the part of the judgment creditor. Within six weeks therefore after such return of warrant, the application for execution should be struck off the list, leaving it of course optional to the creditor to make a fresh application, at any future time, should he see fit to do so. In respect to the other cases, the Courts must use their best efforts to expedite the execution of the decree.(*n*)

(*l*) F. U. Pro. 27th August 1835.
(*m*) S. U. Dy. 10th February 1837.
(*n*) S. U. Dy. 5th May 1849.

58. The mode of enforcing judgments in places beyond the jurisdiction of the Courts pronouncing them, in cases in which they cannot be executed within the jurisdiction of such Courts, is laid down by Act XXXIII., 1852, the provisions of which are as follows:

Enforcement of judgments in places beyond the jurisdiction of the Courts pronouncing them.

(II.) The party may apply to the Court which shall have pronounced such judgment, for a copy thereof, and also for a certificate that satisfaction of such judgment has not been obtained by execution within the jurisdiction of the said Court, also for a copy of any order for execution of such judgment that may have been passed, and, if necessary, for a translation of the said judgment and order for execution into the English language. The Court, unless there be any sufficient reason to the contrary, shall cause such copy and certificate, and translation, if necessary, to be furnished, and the same shall be signed by the Judge, or one of the Judges of the Court, and sealed with the seal of the Court.

What papers the party should obtain from the Court which passed the judgment.

(III.) If such Court shall be the Principal Civil Court, the Judge shall describe himself accordingly in the certificate and shall also name the Court and the district.

What should be certified if such Court be the principal Civil Court in the District.

(IV.) If the Court shall not be the Principal Civil Court of original jurisdiction in the district, the copy of the judgment and of the order for execution, if any, the certificate of the Judge and the translation, if any, shall, without delay, be transmitted to the Principal Civil Court of original jurisdiction in the district; and the Judge or one of the Judges of such Court, shall issue a certificate under his hand and the seal of the Court, verifying the signature of the Judge of the Court in which the judgment shall have been given to the documents above mentioned: and in such certificate the Judge signing the same shall describe himself as the Judge, or one of the Judges, of the Principal Civil Court of the district, and shall also name the Court and the district.

If such Court be a lower Court, the copy of judgment and other papers should be forwarded to the principal Court, which should verify the signature of the Judge of the lower one.

(V.) All copies, translations, and certificates which may be furnished by, or transmitted to the Principal Civil Court of original jurisdiction in the district in which such judgment shall have been given, shall be transmitted by such Court without delay to the Principal Civil Court of original jurisdiction in the district in which the party may wish to have the judgment en-

All such papers should be transmitted to the principal Civil Court of the District in which the judgment is to be enforced: if such Court be the Supreme

Court, to the Prothonotary thereof. The papers to be ordinarily filed, without proof, in the Court to which they are transmitted for execution.

forced or executed; and if such last-mentioned Court be the Supreme Court of Judicature of either of the Presidencies, to the Prothonotary of the Court; and such Court shall cause the said documents to be filed therein, without any proof of the judgment or order for execution, or of the copies thereof, or of the translations, if any, or of the seal or jurisdiction of any Court, or of the signature of any Judge, unless the Court to which such documents shall be transmitted, shall, under any peculiar circumstances to be specified in an order, require the same.

Effect of such copy of judgment. The Court to which it is sent for execution may order a lower Court to enforce it.

(VI.) The copy of any judgment, or of any order for execution, when filed in the Court to which it shall be transmitted for the purpose of being executed or enforced as aforesaid, shall for such purpose have the same effect as a judgment or order for execution made by such Court, and may be enforced or executed by such Court, or any Court Subordinate thereto, to which it may entrust the enforcement or execution thereof.

Judgment to be enforced by the Court to which it is transmitted, according to its own rules and mode of procedure.

(VII.) When application shall be made to any of the said Courts to enforce or execute the judgment of any other Court as aforesaid, the Court to which application shall be made, or referred, shall proceed to enforce or execute the same according to its own rules and mode of procedure in like cases; and the last-mentioned Court shall take cognizance of, and punish all wrongful acts or irregularities done, or committed in enforcing and executing such judgment; and all persons disobeying or obstructing the enforcement or execution of any such judgment shall be punishable by such last-mentioned Court, in the same manner as if the said judgment had been pronounced by such Court.

What Decrees of Military Courts of Request may be enforced under this Act.

(VIII.) The Decrees of which execution is to be general, of any Military Court of requests holden within the territories under the Government of the East India Company, or mentioned in Section 17, Act No. XI., 1841, may be enforced in the manner provided by this Act. No such Decree however shall be enforced under this Act against the person of the debtor, if a soldier. In the case of a Decree of a Military Court of Requests, the copy, decree, and certificate, and translation, if any, shall be signed by the Officer Commanding the station or Cantonment, who shall describe himself accordingly; and no proof of the Decree, or of the signature or appointment of such Officer, or of the jurisdiction of the Court shall be necessary, unless the Court to which

the same may be presented shall think fit, under any peculiar circumstances to be specified in an order, to require the same.

What Petitions for execution may be on plain paper.

(IX.) A petition for execution, under this Act, of any judgment of a Moonsiff's Court, or of any decree of a Military Court of requests may be written on plain paper.

Orders passed during execution appealable.

(X.) An appeal shall lie from any order for the enforcement or execution of a judgment under this Act in the same manner, and subject to the same rules and regulations as if the judgment had been originally given by the Court making such order.

Interpretation clause.

(XI.) In this Act, the word "judgment" means a judgment in a Civil suit or proceeding, and includes any final decree or order in a Civil suit or proceeding. The word "party" shall include any person who would be entitled to maintain a suit upon the judgment. The masculine gender shall include the feminine, and the singular number shall include the plural.

Decrees of VILLAGE MOONSIFFS.

59. Village Moonsiffs are authorized to allow in their decrees such reasonable periods for their execution as may appear just in particular cases, not however in any case, exceeding three months.(*o*)

60. If the judgment debtor do not discharge the sum decreed against him within thirty days after the date on which copies of the decrees may have been furnished or tendered to the parties or their Vakeels, or within the period limited in the decree, the Village Moonsiff should, on the written application of the judgment creditor, attach the property of the party cast, to the value of the sum decreed, and give immediate notice of such attachment and of the day fixed for the sale, to the District Moonsiff, whose duty it will be to send a Peon to sell the attached property by public auction in presence of the Village Moonsiff, at the expiration of the time fixed in the notice of sale.(*p*)

61. The Peon should not have any charge of the property attached. His duty will be to sell the property and receive the purchase money, from which he should pay to the judgment

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(*o*) Sec. 23, Reg. IV., 1816.
C. O. 24th December 1829 C.

(*p*) Cl. 1, Sec. 30, Reg. IV., 1816.

creditor, the amount decreed, taking his receipt, attested by the Village Moonsiff and Curnum.(q)

62. The Peon will be entitled to receive batta at the rate of two annas a day during his deputation; the amount of such batta together with every expense attending the sale, being defrayed by the party cast, or deducted from the proceeds of the sale on the certificate of the Moonsiff and Curnum that such amount of batta and expenses are correctly charged.(r)

63. If any surplus remain of the proceeds of the property sold, after satisfying the decree and defraying the expenses incurred including the batta of the Peon, it should be paid to the party cast, and his receipt for the same attested by the Village Moonsiff and Curnum, should be taken by the Peon and produced to the District Moonsiff, along with the receipt of the judgment creditor, and the Village Moonsiff's certificate of the amount of batta and expenses aforesaid, as the vouchers of his having correctly discharged his duty.(s)

64. Provided however that in every instance of property being attached in execution of a Decree, the Village Moonsiff should cause public notice to be given of the intended sale, by beat of drum through the Village, five days previous to the sale; and further that it will be optional to the party cast to satisfy the judgment at any time previous to the period fixed for the sale, and that on his so satisfying the judgment by paying the amount to the Village Moonsiff, or to the Peon if he should have arrived, together with the batta of the Peon and all other attending expenses, according to a certificate to be furnished by the Village Moonsiff, the Village Moonsiff should withdraw the attachment and restore the property to the possession of the owner.(t)

65. Resistance to a sale of property in execution of a Village Moonsiff's Decree should be considered a breach of the peace, and punished accordingly.(u)

District Moonsiff alone can execute a Village Moonsiff's Decree.

66. The Decree of a Village Moonsiff can only be executed by a District Moonsiff.(v)

(q) Cl. 2, Sec. 30, Reg. IV., 1816.
(r) Cl. 3, Ibid.
(s) Cl. 4, Ibid.
(t) Cl. 5, Ibid.
(u) Cl. 6. Ibid.
(v) C. O. 24th December 1829.
C. O. 4th March 1817.

He should first satisfy himself of its legality.

67. Before proceeding to execute a Village Moonsiff's Decree, the District Moonsiff should satisfy himself of its legality, by reference to the Reports which the Village Moonsiff will transmit to him every month agreeably to Section 36, Regulation IV, 1816. The District Moonsiff should ascertain, by the reference, the amount decreed, and satisfy himself that the suit was neither for real property nor for personal damages, and that the interest has been calculated according to the regulations.(*w*)

Penalty for enforcing an illegal decision.

68. A District Moonsiff enforcing an illegal decision of a Village Moonsiff will render himself amenable to the penalties of some one of the clauses of Section 7, Regulation VI., 1816, according to the culpability of his act.(*x*)

Process is only against property, not person of debtor.

69. The process prescribed for the execution of a Village Moonsiff's decree is exclusively against the property, not against the person, of the judgment debtor.(*y*)

Limitation of time.

70. With reference to the restriction contained in para. 59, the Sudr Court have ruled that the intention of Section 23, Regulation IV., of 1816, is to prevent the *Court* suspending the execution of a Village Moonsiff's decree to the detriment of the plaintiff beyond a certain period, and that it is not intended to force the execution within this period, whether the plaintiff wished it or not. The Decree may be executed at any time within 12 years after being passed.(*z*)

Decrees of VILLAGE PUNCHAYETS.

71. Decrees of Village Punchayets assembled under Regulation V, 1816, should be carried into execution by the Village Moonsiff, under the rules contained in paras. 60 to 66, provided the sum of money or value of property adjudged does not exceed one hundred Rupees.(*a*)

72. In suits for sums of money or other personal property of an amount or value exceeding one hundred, but not exceeding two hundred Rupees, the Decrees of Village Punchayets should be enforced by the District Moonsiffs, on the written application of the party praying execution of the same.(*b*) Before proceeding to execution, the District Moonsiff should satisfy himself of the

(*w*) C. O. 1st December 1817.
(*x*) C. O. 4th March 1817.
(*y*) C. O. 24th December 1829 C.
(*z*) S. U. Pro. 27th March 1831. 17th November 1851. 27th October 1852.
(*a*) Cl. 1, Sec. 16, Reg. V., 1816.
(*b*) Cl. 2, Ibid.

legality of the Decree, in the same manner as he would that of a Decree of a Village Moonsiff, (vide para. 67.) (c)

73. In all other cases, the Decisions of Village Punchayets should be carried into execution by the Subordinate Judges or Principal Sudr Ameens, in the mode prescribed for the execution of their own Decrees.(d)

74. Subordinate Judges or Principal Sudr Ameens may employ District Moonsiffs in executing Decrees of Village Punchayets.(e)

Decrees of District Punchayets.

75 Decrees of District Punchayets assembled under Regulation VII., 1816, should be carried into execution by the District Moonsiffs, provided, firstly, that if the suit be for Lakaraj land, the annual produce of such land should not exceed the sum of twenty Rupees; secondly, that if the suit be for Mulgoozarry land, the annual produce should not exceed 200 Rupees; and thirdly, that if the suit be for real property, not of the description above mentioned, or for sums of money or other personal property, the value or amount of such property should not exceed two hundred Rupees.(f)

76. In all other cases the decisions of District Punchayets should be executed by the Zillah Judge in the mode prescribed for the enforcement of his own Decrees.(g)

77. Zillah Judges may refer to Subordinate Judges and Principal Sudr Ameens, applications for the execution of Decrees of District Punchayets.(h)

78. District Moonsiffs may be employed by Zillah Judges in executing Decrees of District Punchayets.(i)

Decrees of Revenue Punchayets.

79. Decrees of Village and District Punchayets assembled under Regulation XII., 1816, cannot be carried into execution until confirmed by the Collector.(j)

80. Decrees of such Punchayets should be executed on the written application of the party in whose favor the Decree may

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(c) C. O. 1st December 1817.
(d) Cl. 3, Sec. 16, Reg. V., 1816.
(e) Cl, 2, Sec. 17, Act VII., 1843.
(f) Cl. 2, Sec. 16, Reg. VII., 1816.
(g) Cl. 2, Ibid.
(h) Sec. 20. Act VII., 1843.
(i) Cl. 2, Sec. 17, Act VII., 1843.
(j) Cl. 4, Sec. 6, Reg. XII., 1816.

be made, by the Collector, or by the Tahsildar, or principal native revenue officer of the District, by causing the boundary, when the suit relates to a disputed boundary, to be marked out in the presence of the Village Moonsiff and Curnum, and two or more of the principal inhabitants; and in all other cases, by causing the land to be given up, or the water to be distributed as prescribed by the Decree.(*k*)

Decrees of NATIVE MILITARY COURTS OF REQUESTS.

81. Every Decree of a Native Military Court of Requests should be published in the Station Orders before it is executed.(*l*)

Execution may be general or special.

82. The execution of Decrees of Military Courts of Requests may be either general or special, according to the sentence of the Court. But the Commanding Officer may, notwithstanding the direction of the Court, order that the execution may be general or special at his discretion.(*m*)

Procedure when execution is general;

83. In cases in which the execution is to be general, the debt if not paid forthwith, should, under the authority of the Commanding Officer in writing, to be signed by him, be levied by seizure and public sale of such of the debtor's goods (under which term are included houses or other erections within the limits of Stations or Cantonments,) as may be found within the limits of the Station or Cantonment, or elsewhere; and if sufficient goods are not to be found, the debtor, if not a soldier, should be arrested and imprisoned in any Civil Jail near to the Station or Cantonment, (for which purpose the provisions of Act II., 1840, will be applicable,) or in any other convenient place of confinement situated within the limits of the Station or Cantonment, for the space of two months, unless the debt be sooner paid, and his goods, if found within the limits of the Station or Cantonment, or elsewhere, at any subsequent time, will be liable to be seized and sold in satisfaction of the debt. And if the debtor be a soldier and the debt be not liquidated by sale of his effects, accoutrements and necessaries excepted, an order may be issued for payment of the residue by monthly deduction from the pay issued to the debtor under the Rules which follow.(*n*)

(*k*) Sec. 10, Reg. XII., 1816.
(*l*) Sec. 13, Act XI., 1841.
(*m*) Sec. 14, Ibid.
(*n*) Sec. 15, Ibid.

When special.

84. Where the execution is to be special, the debt should be satisfied out of the pay and allowances of the debtor and not otherwise. A certificate of the Decree, and direction or order thereon certified under the hand of the Commanding Officer and signed by him, will be a sufficient authority for making such stoppages. But no more than one-half of the pay and allowances of any Commissioned Officer, or than one-fourth of the pay and allowances of any Non-Commissioned Officer or soldier can be stopped in any one month.(o)

Decrees of Police Officers and Military Punchayets.

85. Decisions in Civil Suits passed by Officers in immediate charge of the Police or by Punchayets under Regulation VII., 1832, should, on the application of the party in whose favor the judgment is given, be carried into execution, by the Officer in charge of the said Police, under the orders of the Commanding Officer, in the manner prescribed by paras. 82 and 84. But no award of a Punchayet can be carried into execution until forty days after the date on which copies of it were delivered or tendered to the parties, and further that when the amount or value awarded by a Punchayet has not been paid by the party cast, and cannot be realized from any property or effects belonging, or due to him within the Military limits, application may be made by the Commanding Officer to any Zillah Judge within whose jurisdiction property belonging to the defaulter may exist, to realize the residue; and the said Judge should levy the amount from any property of the defaulter within his jurisdiction, remitting the amount, and communicating the result to the Commanding Officer. Meantime such defaulter should be arrested and imprisoned for two months, as provided by para. 83, and at the expiration of that period, he will be liable to be sent by the Commanding Officer to the nearest Zillah Judge, who, if the Plaintiff pay the usual batta for his prolonged confinement in Jail should proceed regarding him, as against other civil debtors.(p) Parties so sent to Jail should be accompanied by an authenticated copy of the award of the Punchayet.(q)

86. Whenever it may be necessary, under the provisions contained in the preceding para., to forward a party for imprison-

(o) Sec. 16, Act XI., 1841.
(p) Cl. 1, Sec. 33, Reg. VII., 1832.
(q) Cl. 2, Ibid.

ment in a Civil Jail, the Commanding Officer should send him under proper custody, accompanied with a paper in the following form, in duplicate.(r)

To

The ———— *of the Zillah of* ————

Name, Caste, and Trade or Profession of the Person sent.	Name of his native place, and of the Zillah in which it is situated.	Cause for which he is sent.	Hour and Date on which he set out.	Names of Prosecutors or Witnesses accompanying.	List of documents accompanying.

87. The Civil Officer to whom the above paper may be addressed should certify on the back of one of the papers, whether the persons and documents specified in it have been duly received, the copy so endorsed being returned to the person who delivered it, and the other paper remaining with the Civil Officer.(s)

88. The Civil Officers should receive all persons thus sent to them, and should proceed concerning them according to the Regulations.(t)

Decrees of Military Punchayets beyond the Frontier.

89. The decisions of Military Punchayets assembled in Stations beyond the Frontier should be carried into execution by the Commanding Officer, unless either party, within ten days after the passing of the award, presents to him in writing a charge of gross partiality against the Punchayet and appeals from the award.(u) The decisions upon the appeal should be carried into effect, under the orders of the Officer Commanding.(v)

(r) Cl. 1, Sec. 34, Reg. VII., 1832.
(s) Cl. 2, Ibid.
(t) Cl. 3, Ibid.
(u) Cl. 2, Sec. 42, Reg. VII., 1832.
(v) Cl. 3, Ibid.

DECREES.

SECTION VI.

EXECUTION PENDING APPEAL.

Execution cannot be granted without security.

1. In all cases in which an appeal is allowed by the Regulations, whether a first or regular appeal, or a second or special appeal, whatever may be the nature of the property awarded by the decree, execution can in no case be granted to the decree-holder, within the period allowed for presenting an appeal, or even after the expiration of that period, if an appeal be pending; unless he gives security for the performance of the decree of the Appellate Court.(*w*)

Security to obtain execution where Decree is for moveable property.

2. Where the property awarded consists of money or other moveable property, the security to be given by the decree-holder to obtain execution, must be sufficient, in addition to the amount or value adjudged, to cover the interest that may be expected to arise upon the amount payable under the decree, if confirmed in appeal, according to the rule prescribed by Section 35, Regulation IV., 1802, for adjudging interest in such cases.(*x*)

Security to suspend execution in similar cases.

3. But should an appeal be preferred and the appellant furnish similar security in such cases, either at the time of preferring his appeal or within such reasonable period afterwards as may be fixed for the purpose, execution of the decree must be stayed by the Court which pronounced it.(*y*)

4. Even if the appellant does not give security, the decree-holder cannot, without security, obtain execution of the decree.(*z*)

Additional security may be taken where previous security may be insufficient.

5. Notwithstanding that the Appellant may have entered into the security required, the Appellate Court is authorized in cases, wherein, from delay in the decision, the security so given may

(*w*) Cl. 5, Sec. 12, Reg. IV., 1802.
Cl. 6, Sec. 10, Reg. V., 1802.
C. O. 24th May 1808.
C. O. 4th June 1832.

(*x*) Cl. 2, Sec. 12, Reg. XII., 1809.
C. O. 24th May 1808.

(*y*) Cl. 5, Sec. 12, Reg. IV., 1802.
Cl. 6, Sec. 10, Reg. V., 1802.
Cl. 2, Sec. 12, Reg. XII., 1809.
Cl. 5, Sec. 53, Reg. VI., 1816.

(*z*) C. O. 24th May 1808.

appear insufficient, to require, on the application of the Respondent, any additional security which it may deem necessary, to secure the latter party from any loss by the non-execution of judgment during the appeal, and in default of such further security being given, within a reasonable period to be fixed for that purpose, the Court is empowered to direct the judgment to be carried into execution, taking security from the Respondent. The supplemental security here mentioned as necessary to maintain a depending appeal is carefully to be distinguished from the securities originally necessary to warrant the cause being appealed; the supplemental security being only demandable by the Appellate Court after a lapse of time, the original securities being requirable by the lower Court previous to the petition of appeal being admitted.(*a*)

When execution may be stayed without security.

6. In applying the rule contained in para. 3 to any particular case of appeal, it is obviously essential that the Court should, in the first place, inquire how far security is necessary for the purpose of staying the execution of the Decree appealed from; for if it should be found that the Decree has not transferred the possession of property, and that no part thereof which required execution under the Regulations, could be suspended, it must of course follow that such case was not contemplated by the rule referred to.(*b*)

7. Hence a Plaintiff non-suited and appealing, is not, under the existing Regulations, subject to the operation of the rule aforesaid, there being no transfer of property in a case of non-suit.(*c*)

Security to enable Respondent to obtain possession of landed property decreed.

8. Whenever a person claiming the proprietary right in land, houses, or other immovable property not in his possession, obtains a decree in his favor, upon investigation of the merits, in the Court of first instance, he can obtain possession thereof in execution, notwithstanding an appeal, upon giving security, in a sum equal to one year's produce of the land adjudged if Malgoozary, or ten years produce, if Lakhiraj; or the computed value of the property, if it be a house, or immovable property of any other description.(*d*) The estimated value of

(*a*) Cl. 8, Sec. 12, Reg. IV., 1802.
Cl. 9, Sec. 10, Reg. V., 1802.
(*b*) C. O. 24th May 1808.
(*c*) Ibid.
(*d*) Cl. 2, Sec. 11, Reg. XII., 1809.

one year's produce of Malgoozary land should be exclusive of the expenses of cultivation, but inclusive of the Circar's share.(e)

Appellant may retain possession, giving similar security.

9. If however the Court of appeal should, in any instance, see special cause for leaving the Appellant in possession during the appeal, it may pass an order to that effect, requiring from the Appellant the same security as is above required to be given by the Respondent.(f)

Execution may be stayed by a Judge of Sudr Court.

10. A single Judge of the Sudr Court may direct, in all cases in which that measure may appear to him expedient, that the execution of any judgment or order passed by an inferior Court, may be stayed, until a final decision has been passed thereon.(g)

Practice where disputed land is advertised for revenue sale.

11. The Indian revenue system having regard to the interests of the state only, peremptorily exacts certain periodical payments, under the penalty of seizure and sale of the land, in respect of which the payment ought to be made. In order to prevent this rule from operating unjustly between the litigants, by enabling the party who is in possession of the land in question during an appeal, to cause its forfeiture by withholding payment of the sum due to Government on account of revenue, it has been enacted that, whether the Appellant or the Respondent be left in possession of land paying revenue to Government, during an appeal, if the party in possession should neglect to pay the revenue due upon the assessment and a public sale be consequently ordered to take place; the party not in possession will, by paying the revenue due and giving the prescribed security previously to the sale, be put in immediate possession, and be entitled to charge the amount so paid with interest thereupon, at the rate of twelve per cent per annum, in any adjustment of accounts which may be directed in the final Decree in the cause.(h)

Restrictions respecting transfer of the land during appeal.

12. In all instances wherein the Plaintiff in a lower Court may obtain a judgment in his favor, for land, or other real property, and the Defendant appealing therefrom to the Zillah Court may be left in possession of the property under the prescribed security, any private transfer of such property by sale, gift or otherwise, or any mortgage thereof made by such Ap-

(e) C. O. 29th August 1831.
(f) Cl. 3, Sec. 11, Reg. XII., 1809.
(g) Cl. 4, Sec. 10, Act VII., 1843.
(h) Cl. 4, Sec. 11, Reg. XII., 1809.

pellant during the appeal to the Zillah Court, or during a further appeal to the Sudr Court, or to the Queen in Council, will, in the event of the judgment against him being confirmed on the appeal, be null and void.(i)

Rule where the land is sold for revenue;—

13. But whenever any land or other property, for which a judgment may have been obtained, but which may, during appeal, be left in possession of the Appellant, shall, while such appeal is pending, or before the ultimate judgment thereon be put in execution, be sold by Government, to make good an arrear of the public revenue due from the Appellant, and shall be purchased by the Respondent; the latter party shall, in the event of such property being finally adjudged to him on the appeal, be entitled to recover from the Appellant, the full amount of the purchase money and of all expenses attending the purchase, with interest at the rate of twelve per cent per annum, in addition to any other sum which may be adjudged due to him, on account of the profits arising from the land or other property in question, anterior to the sale.(j)

1. To the Respondent.

2. To a Stranger.

14. In the case above supposed, if the Respondent shall not have purchased the land, or other property, sold by Government to make good an arrear of public revenue due from the Appellant left in possession thereof; and if the ultimate judgment on the appeal be in favor of such Respondent, he shall be entitled to recover from the Appellant left in possession, the amount of the purchase-money paid for the property so sold, and adjudged to the Respondent, with interest thereon at the rate of twelve per cent per annum, in addition to any other sum which may be adjudged to him on account of the profits arising from the property so sold anterior to the sale of it; unless the property in question shall have been, directly, or indirectly, purchased by the Appellant himself, or on his behalf, at the public sale; in which case, on clear proof thereof being made by the Respondent, to whom such property may be ultimately adjudged, he shall be entitled to the possession thereof, and to all profits arising therefrom, as may be directed by the Decree in the case, notwithstanding the fictitious sale supposed.(k)

3. To the Appellant himself.

Extension of the above rules to other cases.

15. The principles of the rules above stated are equally applicable to cases in which the Plaintiff may be put in posses-

(i) Cl. 1, Sec. 14, Reg. IV., 1802.
(j) Ibid.
(k) Ibid.

sion of land, or other property adjudged to him, during an appeal, in consequence of the Defendant's failure to give security for staying execution; and, generally, to all cases, in which the possession of property may be transferred by the Decree of any Court of Justice, from which Decree an appeal may be depending in a superior Court, whether the Zillah Court, or the Court of Sudr Udalut, or before Her Majesty in Council.(*l*)

Attachment pending appeal.

16. As cases may occur wherein neither the Appellant nor the Respondent may be able to give the prescribed security for staying the execution of Decrees, or for the execution thereof in favor of the Plaintiff, it has been enacted that, in all such cases, the property adjudged shall be held in attachment, during the appeal, or until one of the parties may be able to give the required security, by the Collector of the District wherein the land may be situated, at the expense of the party who may be ultimately declared entitled thereto, under the provisions in that respect established. No attachment however is to be made by any Collector in the cases supposed, until he receives a precept requiring him to do so, from the Court wherein the original judgment may have been passed, which precept should state specifically the property to be included in the attachment, and should require the Collector to continue the same till ordered to be withdrawn by a further precept from the Court, to be issued, either on the prescribed security being given by one of the parties, or on the cause being finally determined.(*m*)

Security in appeals to Queen in Council.

17. The security to be taken from a party in whose favor a Decree of the Sudr Udalut for landed property shall be executed pending an appeal to the Queen in Council, shall be for a sum equal to the difference between the annual produce thereof (as defined by Section 3, Regulation III., 1802,) and the yearly revenue payable to Government; further security for an amount, to be similarly calculated, continuing to be demanded at the beginning of every successive year, so long as the appeal to the Queen in Council shall be depending; and on failure of the security demanded being given, the landed property shall be placed under attachment, or in possession of the opposite party, as the case may be.(*n*)

(*l*) Cl. 2, Sec. 14, Reg. IV., 1802.
(*m*) Cl. 9, Sec. 12, Reg. IV., 1802.
Cl. 10, Sec. 10, Reg. V., 1802.
(*n*) C. O. 21st September 1826.

Where original suit may have been instituted in *formâ pauperis*.

18. Where a Decree in a suit for personal property, instituted in *formâ pauperis*, may be appealed from, if the pauper Respondent apply for security to be taken from the Appellant in possession of the property, for the performance of the Decree of the Appellate Court, such security should be demanded from the Appellant; and in default of its being given, the Decree should be so far executed as to realize and place in deposit the amount of it, inasmuch as the pauper Respondent cannot obtain execution of the Decree in his favor, and the interests of justice require that the fulfilment of the final judgment should be secured; and the only means of securing it in the case of personal property, is to take security, or to realize and place in deposit the amount of the Decree.(*o*)

Inquiry as to security being good and sufficient.

19. The Judges of the several Courts by which security may be taken from Appellants or Respondents for performing the Decrees to be passed on appeals should be particularly careful in ascertaining that the security received is good and sufficient; and they are required, in all cases, to cause the Nazir, or other Officer, by whom the property of the sureties may be ascertained, to deliver in as accurate a statement as can be obtained of such property, with a full report of the enquiry made respecting it, informing him, at the same time, that he will be held responsible for any wilful misrepresentation, in his statement or report.(*p*)

Property pledged to the Court cannot be alienated.

20. All persons who may enter into security bonds for the execution of the Decrees of the Civil Courts, or for staying the execution of judgments in Civil suits pending an appeal, are prohibited from transferring by sale, gift, mortgage or otherwise, any land or other immovable property belonging to them, and specified in the schedule of property on which their security may have been accepted, until the object of their security shall have been completely fulfilled.(*q*)

Qualification of the rule.

21. This prohibition however does not affect the legality of any private transfer or mortgage of such property, in cases in which the amount of any demand on the surety which may eventually arise under the terms of the security bond, shall be duly discharged by him. But no private transfer or mortgage of such property which may be made by a surety in the in-

(*o*) C. O. 12th May 1836, No. 29.
(*p*) Sec. 13, Reg. XII., 1809.
(*q*) Cl. 2, Sec. 13, Reg. XV., 1816.

terval between the execution of the security bond and the final and complete enforcement of the judgment, is considered to bar the prior right of the Court to hold the whole, or any part, of such property answerable in the first instance for the amount of any demand upon it, which may eventually arise under the terms of the security bond, and which may not be duly discharged by the surety.(r)

Locale of pledged property.

22. Since the property of a person who executes a security bond, cannot be made available for its discharge unless situated in the Company's territories, he should, in making affidavit that he possesses property sufficient for the purpose, be also required to declare that the property is within the jurisdiction of the Court taking the security.(s)

23. Securities taken and certified, by a lower, on order of an Appellate Court, are to be retained in deposit by the lower Court.(t)

24. Government paper may be taken as security by the Courts.(u)

(r) Cl. 3, Sec. 13, Reg. XV., 1816.
(s) C. O. 10th September 1831.
(t) C. O. 20th December 1808.
(u) C. O. 29th January 1805.

DEFAULT.

1. If a Plaintiff, in any Court, should, at any time, neglect to proceed in his suit for six weeks, the suit should be dismissed, without any previous notice being given to such Plaintiff. The suit should be dismissed as of course, after the expiration of six weeks, without any proceeding on the part of the Court, or of the Defendant, or otherwise, or assignment of any reasons, unless the Plaintiff, or his representative in case of his death, upon special application, may have previously satisfied the Court of the propriety of allowing further time.(*v*)

Suit to be dismissed if Plaintiff do not proceed for six weeks.

2. The Court should record upon the proceedings the reasons at large for allowing further time, but the reasons for refusing any application for further time need not be specified.(*w*)

Reasons for granting further time to be recorded.

3. In all cases in which a suit is thus dismissed, the Court should award to the Defendant the costs he may have incurred in the suit. But such dismissal is no impediment to the institution of a new suit, where the party is not precluded by lapse of time, or otherwise than by the mere circumstances of having instituted the suit dismissed, and of such dismissal; and such dismissed suit cannot stay the operation of the law of limitations.(*x*)

Costs to be awarded to Defendant in dismissed suits.

New suit may be instituted.

4. Upon the death, resignation or removal of a Vakeel attached to a Zillah, or Subordinate Zillah Court, or whenever a Vakeel, from protracted indisposition, or other cause likely to be permanent or of considerable duration, may be unable to attend Court, the Judge should notify the same in a publication affixed in his own Court, and in the Court of the Sudr Ameen, as well as in the Cutcherry of the Collector of the District, containing a statement of the several depending cases in which such Vakeel may be employed, and a requisition to the parties who retained him to attend in person, or to appoint another Vakeel within a reasonable time to be fixed

Default in not appointing Vakeel.

(*v*) Sec. 1, Act XXIX., 1841.
(*w*) Ibid.
(*x*) Sec. 2, Ibid.

by the Court, not being less than six weeks. If the party do not attend or appoint another Vakeel within such limited period, he should be required to show cause for the omission, and if sufficient cause be not assigned, the Court should proceed as in case of default.(y)

5. On the occurrence of a like contingency in suits depending before them, a similar Notification should be affixed by Sudr Ameens and District Moonsiffs in their Court Houses respectively, and the same subsequent procedure observed by them as is above prescribed for the higher Courts.(z)

6. When a Notification of this nature may be made by the Sudr Court, the time to be limited therein for the party to appear or appoint another Vakeel should not be less than three months.(a)

Default in not filing exhibits and lists of witnesses.

7. If either party in a suit fail to produce his exhibits and list of witnesses within the time limited by the Court, and do not satisfactorily account for the default, he should be subjected to fine, and a second date fixed for the purpose. Should he incur a further delay, the fine is to be repeated, or (preferably) the suit, if the failure be on the Plaintiff's side, should be struck off after a lapse of six weeks from the period of the first default.(b)

Default in not being present at the hearing.

8. In suits before District Moonsiffs in which the answer has been filed and the Plaintiff fails to appear in person or by Vakeel at the time the suit is first called over for trial, the District Moonsiff should suspend the trial and affix in some conspicuous place in his Court house, a Notice that the suit will be again called over for trial after the expiration of a fixed period, not being less than ten days.(c) If the Plaintiff should fail to appear personally, or by Vakeel, within six weeks from the date of such Notice being served on him, the District Moonsiff should dismiss the suit for default.(d)

What precise default should lead to dismissal of suit.

9. No default is to lead to the dismissal of a suit but such as may present a positive impediment to the progress of the suit, as when the Plaintiff may omit to amend his plaint in some

(y) Cl. 1, 2. and 4, Sec. 18, Reg. XIV., 1816.
(z) Sec. 10, Reg. VIII., 1816. Sec. 11, Act I., 1846.
(a) Cl. 3 and 4, Sec. 18, Reg. XIV., 1816.
(b) R. P. S. U. Cl. 22.
(c) Cl. 1, Sec. 26, Reg. VI., 1816.
(d) C. O. 30th May 1842, No. 82.

essential particular, or to include as Defendant a party necessary to be made Defendant, or to adduce his evidence, or to attend for the examination of his witnesses.(e)

Time.

10. When a default of the above nature may occur, the Courts are invariably to strike off the suit at the expiration of six weeks from the time when the Plaintiff should have appeared to perform the act required of him, unless, previous to the expiration of the said six weeks, the Plaintiff may have appeared and have obtained an extension of time for performance of the act in question.(f)

Mere attendance of Plaintiff will not save him from being accounted in default.

11. The mere appearance of a Plaintiff in Court does not save him from being accounted in default. He must actually perform what is required of him within the abovementioned term, or extended term, to avoid incurring the consequences of default.(g)

What appeal lies from an order of dismissal.

12. No appeal lies against a decision dismissing a suit for default under the provisions stated, other than a summary appeal on the fact of default.(h)

What cures a Plaintiff's default.

13. Every default of a Plaintiff should be held to be cured, whenever the opposite party, passing over the default, has taken any step in the suit, and whenever the Court has passed judgment in the suit, whether such opposite party has, or has not taken any such step.(i)

Rules of default in original suits applicable to appeals.

14. The foregoing provisions relating to Plaintiffs and their representatives, and to Defendants in original suits, are equally applicable to Appellants and their representatives, and to Respondents in appeal suits tried by any competent Court.(j)

Relaxation of Act XXIX., 1841.

15. Whenever however an appeal has been dismissed by a Court for default under the foregoing provisions, the same Court may readmit the appeal, if the Appellant should make application for that purpose on the stamp prescribed for Miscellaneous Petitions within three months after the dismissal, if the appeal were dismissed by the Sudr Court, and within one month after the dismissal, if by any other competent Court, and if he should satisfy the Court that the dismissal was occasioned by the default of his Vakeel or to unvoidable accident.(k)

Not applicable twice to same case.

16. But no appeal so readmitted and again dismissed for default, can be again readmitted.(l)

(e) R. P. S. U. Cl. 32.
(f) Ibid, Cl. 33.
(g) Ibid, Cl. 34.
(h) Sec. 3, Act XXIX., 1841.
(i) Act XVI., 1847.
(j) Act XXIX., 1841.
(k) Sec. 1., Act XVI., 1845.
(l) Sec. 3, Ibid.

DISTRICT MOONSIFFS.

1. No person whatever, is, by reason of place of birth or by reason of descent, incapable of being a District Moonsiff.(*m*)

2. The number of District Moonsiffs for each Zillah should be fixed by the Government.(*n*)

Selection for the Office.

3. Zillah Judges should recommend to the Sudr Adawlut the persons they may deem fit for the situation of District Moonsiff;(*o*) the selection being made upon a general view of the claims of the persons qualified for the office, in both the Zillah and Subordinate Zillah Courts, and of the candidates for the appointment; and a fair consideration being given to their relative merits, abilities, length of service and respectability.*(*p*)

4. In nominating a person to succeed to the office of District Moonsiff, a Nomination Roll (filled up) in the following form should be submitted by the Zillah Judge for the consideration of the Sudr Adawlut:

Form of Nomination of the District Moonsiff of ———

1	2	3	4	5	6	7	8	9
Vacant Office.	How vacated.	Name of person nominated, with the name of his Father.	Age.	Religion and Caste.	Family Residence, viz. Town or Village, Talook and Zillah.	Statement of past employment, whether in the service of Government or Individuals. If in the service of Government, by what Officer originally appointed, and by whom subsequently promoted.	Statement of qualification, and knowledge of the Tamil, Teloogoo, Malyalum, Canarese or English language &c.	Certificate that the nominee is not disqualified by any Regulation or Circular Order; and general remarks, especially whether he is preferred to any of longer service, and why.

* NOTE.—*For rules relative to the eligibility and examination of Candidates for the office of District Moonsiff, see page*

(*m*) Sec. 3, Act XXIV., 1836.
(*n*) Sec. 5, Reg. VI., 1816.
(*o*) Sec. 6, Ibid.
(*p*) C. O. 25th April 1832, C. L. 19th April 1844.
(*q*) C. O. 4th November 1844, No. 92.

5. No person can officiate as a District Moonsiff without the previous sanction of the Sudr Adawlut.(r)

6. Every British born subject, or descendant of a British born subject, appointed a Moonsiff, is, in respect of all acts done by him as such, liable to the same proceedings, as well criminal as civil, and amenable to the jurisdiction of the same tribunals, as if he were not of British birth or descent.(s)

7. Every person appointed a District Moonsiff should be furnished by the Zillah Judge with a sunnud drawn up according to the form No. 1, of the Appendix to Regulation VI., 1816; and, previously to entering upon the duties of his office, he should make and subscribe a solemn declaration in writing according to the form No. 2 of the same Appendix.(t)

8. A copy of the above sunnud, under the official seal and signature of the Zillah Judge, should be delivered to the Moonsiff, in view to its being affixed in some conspicuous place in his Court.(u)

9. District Moonsiffs should receive such monthly allowances only as may be fixed by the Government for their personal salary and the expense of their establishments;(v) and they are not entitled to any emolument whatever beyond such fixed allowances.(w)

10. District Moonsiffs need not furnish stamped receipts for their salaries.(x)

11. Whenever a person may be appointed to act as a District Moonsiff during the absence, on leave or otherwise, of the permanent incumbent, the person so acting will be entitled to receive one half of the fixed salary attached to the situation.(y)

12. All persons appointed to situations vacated by others *conditionally* nominated to District Moonsiffships should be made to understand that *their* appointments also are conditional, depending upon the eventual confirmation of the officiating Moonsiff.(z)

(r) Sec. 6, Reg. VI., 1816.
(s) Sec. 4, Act XXIV., 1836.
(t) Sec. 9, Reg. VI., 1816.
(u) Sec. 10, Ibid.
(v) Sec. 3, Reg. II., 1834.
(w) Act V., 1835.
(x) C. O. 8th February 1832.
(y) C. O. 5th March 1829.
(z) S. U. Pro. 20th November 1848.

13. A District Moonsiff deputed to act at a distance from his own station, or ordered by the Court of Sudr Adawlut on special duty, on the exigency of the public service, will be entitled to draw travelling allowance at the rate of four annas per mile; but, on all other occasions, the absentee, if not on sick certificate, should defray the travelling expenses of the acting incumbent at the same rate.(a)

14. The Collector of the District should furnish the District Moonsiffs with Public Cutcherries or Court Houses.(b)

15. In such Public Buildings, District Moonsiffs should investigate the suits cognizable by them, and should not allow their officers, servants, dependants, or any other person to interfere therein.(c)

By what rules suits should be tried by Moonsiffs.

16. In receiving, trying and determining suits filed before them in the first instance, or referred to them by a higher Court, District Moonsiffs should be guided by the rules prescribed in Regulation VI., 1816; and, in points not expressly provided for therein, they should observe, as nearly as may be practicable, the rules prescribed in the Regulations for the guidance of the Zillah Courts in the trial and decision of civil suits.(d) Upon all doubtful points, they should apply for instructions to the authority to whom in the matter involving doubt, they may be in immediate subjection.(e)

17. No person whatever, by reason of place of birth or by reason of descent, is, in any Civil proceeding, exempt from the jurisdiction of the Courts of the District Moonsiffs.(f)

District Moonsiffs may arbitrate;

18. A District Moonsiff can hear and determine as Arbitrator, all suits voluntarily referred to him by both parties, whether for real or personal property, of a value or amount for which suits may be filed in his Court.(g)

And may summon Punchayets.

19. District Moonsiffs are competent to summon Punchayets for the decision of suits for real and personal property, without limitation as to amount or value.(h)

(a) C. O. 17th October 1845, No. 99.
(b) C. O. 7th December 1829.
(c) Sec. 13, Reg. VI., 1816.
(d) Sec. 18, Ibid.
Cl. 2, Sec. 56, Ibid.
(e) S. U. Pro. 6th November 1843, A.
(f) Sec. 1, Act III., 1850.
(g) Cl. 1, Sec. 57, Reg. VI., 1816.
(h) Cl. 1, Sec. 2, Reg. VII., 1816.

20. In the event of a District Moonsiff's file being constantly in a reduced state, the Zillah Judge should ascertain whether the circumstance arises from local prejudices against the Station, as being unhealthy &c., or whether the Moonsiff's capacity or integrity is questionable; in short whether any ascertainable cause exists susceptible of a remedy.(*i*)

What enquiry should be made by Zillah Judge when Moonsiff's file may be in reduced state.

21. A District Moonsiff has authority to carry his Decrees into execution.(*j*)

22. A District Moonsiff can realize the amount of fines which may be imposed by him, by the attachment and sale, if necessary, of the property of the offending party.(*k*) He should, on or before the fifth of each month, transmit to the Zillah Judge all fines levied by himself, or received from the Village Moonsiffs during the preceding month, accompanied by separate lists, stating the names and situations of the parties from whom such fines were levied and the reasons for which they were imposed.(*l*)

Mode of realizing fines.

Amount to be transmitted monthly to Zillah Judge.

23. District Moonsiffs should also transmit to the Zillah Judge the sums received by them from a Village or District Punchayet on account of stamp penalties, together with the amount of penalties levied by themselves, accompanied by a memorandum of the date and place of payment, and the name of the party by whom it was made.(*m*)

Amount of stamp penalties to be also forwarded to Zillah Judge.

24. District Moonsiffs are liable to an action in the Zillah Civil Courts for corruption, extortion or any oppressive or unwarranted act of authority; and, upon proof of the charge, are subject to pay such damages and costs to the party injured as may appear to be equitable.(*n*)

Liability to Civil action.

25. District Moonsiffs are liable to a criminal prosecution for extortion or oppression; and, on conviction before the Session Court, are subject to fine and imprisonment proportionate to the nature and circumstances of the case.(*o*)

Liability to criminal prosecution.

26. But no Moonsiff can be prosecuted for want of form, or for error in his proceedings or judgments; nor can any process be issued against a Moonsiff charged with extortion, or any

Proviso.

(*i*) C. O. 20th September 1824, B.
(*j*) Sec. 42, Reg. VI., 1816.
(*k*) Sec. 51, Ibid.
(*l*) Sec. 52, Ibid.
(*m*) Cl. 5, Sec. 3, Reg. II., 1825.
(*n*) Cl. 1, Sec. 8, Reg. VI., 1816.
(*o*) Cl. 2, Sec. 8, Ibid.

oppressive or unwarranted act of authority, unless the Zillah Judge be previously satisfied, by sufficient evidence, that there is reason to believe the charge to be well founded.(p)

A Moonsiff may be suspended by Zillah Judge

27. A District Moonsiff guilty of exaction or any other gross act of misconduct may be suspended by the Zillah Judge, by whom a report of the circumstances of the case should be made without delay to the Sudr Adawlut.(q)

28. Whenever a Zillah Judge may see cause for the removal of a District Moonsiff, he should submit a report of the circumstances of the case, with his opinion, to the Sudr Court, who will pass such orders thereon as may appear to be proper.(r)

How Collectors should proceed on receiving complaints against Moonsiffs.

29. Whenever a Collector, or a Subordinate or Assistant Collector may receive information of any acts of extortion, undue exaction or other gross misconduct of a District Moonsiff, he should make such enquiries as the nature of the case may suggest, for the purpose of ascertaining whether any grounds exist for a more full and formal investigation of the charge; and, if he should find such grounds to exist, he should forward a statement of the case, together with a list of witnesses to the facts and circumstances thereof, to the Zillah Judge, in order that he may proceed in regard to the accused in the mode prescribed in the preceding two paras.(s)

30. A District Moonsiff executing an illegal decision of a Village Moonsiff will render himself amenable to the penalties specified in paras. 27 and 28, according to the culpability of his act.(t)

P. S. Ameens cannot suspend or fine Moonsiffs.

31. A Principal Sudr Ameen cannot suspend or fine a District Moonsiff.(u) He should report to the Zillah Judge every instance of misconduct or neglect of duty on the part of the District Moonsiffs within his jurisdiction which may come to his knowledge.(v)

For what acts a Moonsiff may be dismissed.

32. A District Moonsiff is liable to dismissal for borrowing money from the suitors in his Court ;(w) for employing his relatives who are not public servants in any official capacity under him, or allowing

(p) Cl. 2, Sec. 8, Reg. VI., 1816.
(q) Cl. 2, Sec. 7, Ibid.
(r) Cl. 1, Sec. 7, Ibid.
(s) Sec. 8, Reg. II., 1821.
(t) C. O. 4th March 1817.
(u) Sec. 11, Reg. VII., 1827.
(v) Sec. 12, Ibid.
(w) C. O. 26th Dec., 1836, No. 41, A.
(x) C. O. 24th Sept. 1840, No. 68.

them otherwise to interfere with the business of his Court ;(x) for declaring in Court judgments drawn up under dictation by his ministerial subordinates, and for recording their purport in the Diary previous to their preparation in his own handwriting ;(y) for failing to report to the Zillah Judge each instance in which he may avail himself of the privilege leave of 5 days allowed by C. O. No. 98 ;(z) for detaining a revenue defaulter in custody beyond 24 hours without sending him to the Ziilah Judge, unless the party arrested and the party causing the arrest consent, in writing, to the detention ;(a) or for wilfully misstating or falsifying, or causing to be misstated or falsified, the date and purport of the endorsement required to be written on copies of his Decrees, or for keeping back such copies from either of the parties, with the view of opposing a bar to their right of appeal.(b) In addition to dismissal, a Moonsiff guilty of the last mentioned act will be subject to such discretionary fine to Government as the Sudr Court may deem proper.(c)

33. A District Moonsiff cannot lend money to any person within his jurisdiction.(d)

34. In the case of a District Moonsiff who had borrowed money from the near relatives of suitors in his Court, it was ruled that such conduct did not constitute of itself sufficient ground for his dismissal, but that it was highly objectionable for a Moonsiff to incur any pecuniary obligation to any person interested, though he may not be the actual party, in a suit filed in his Court.(e)

35. No District Moonsiff can be removed from his office unless the Sudr Adawlut be satisfied that there is sufficient cause for his removal.(f)

When a vacancy may occur Zillah Judge should nominate successor.

36. Upon the death, removal or resignation of a District Moonsiff, the Zillah Judge should, if necessary, immediately nominate another person in his room for the approbation of the Sudr Adawlut, and should cause all papers in the causes depending before the late Moonsiff to be delivered over to his successor, or otherwise to be disposed of as circumstances may require.(g)

(x) C. O. 24th Sept. 1840, No. 68.
(y) C. O. 20th April 1844, No. 69.
(z) C. O. 14th Oct. 1845, No. 98.
(a) Cl. 2, Sec. 34, Reg. XXVIII., 1802.
(b) Cl. 2, Sec. 38, Reg. VI., 1816.
(c) Ibid.
(d) C. O. 4th December 1845, No. 101.
(e) S. U. Pro. 6th February 1837.
(f) Cl. 4, Sec. 7, Reg. VI., 1816.
(g) Sec. 55, Ibid.

37. The acquisition of landed property by a District Moonsiff is subject to certain restrictions.(h)

In what cases Moonsiffs may be removed from one station to another.

38. The Sudr Court may remove a District Moonsiff from one station to another, whenever they may have reason to believe that he is swayed by local influence, or that he allows the servants on his establishment to exercise an undue influence over the proceedings of his Court, or transfers to them any portion of his own proper duties.(i)

Aged and physically disqualified Moonsiffs to be periodically examined by Zillah Judge.

39. District Moonsiffs whose age may exceed 65 years, or of whose physical ability for the performance of their duties there may be doubts, should be periodically examined by the Zillah Judge, by whom a report should be made to the Sudr Adawlut of any instance in which those Officers may be found to be unequal to the proper discharge of their functions.(j)

(h) Vide page.

(i) C. L. 20th October 1852.

(j) C. L. 3d July 1852.

ESTATES.

Procedure in cases of persons dying intestate, leaving personal property to which there may be no claimants.

1. A Subordinate Judge, or Principal Sudr Ameen, on receiving information that any person within his jurisdiction has died intestate, leaving personal property, and that there is no claimant to it, should adopt such measures as may be necessary for the temporary care of the same, and issue an advertisement, in the current language of the country, requiring the heir of the deceased, or any person entitled to receive charge of his effects, to attend for this purpose; such advertisement being published on the spot where the property was found, at the Zillah Court House, and, if ascertainable, at the dwelling place of the deceased; after which, should any person attend, and satisfy the Court of his title to the property, or to receive charge thereof as Executor, Administrator, or otherwise, the same should be delivered up to him, on payment of any necessary expense incurred in the care of it. Should no claim be preferred within the twelve months next ensuing, an inventory of the property, and a report of the circumstances of the case, should be transmitted to the Governor in Council for his orders.(*k*)

2. In observing the above provisions regarding unclaimed property, the Courts should enter in the Diary every thing connected with such property, and secure in the Court cash chest all jewels and money.(*l*)

3. It is the duty of the Subordinate Zillah Court, and not of the Magistrate, to take charge of all unclaimed property, though it may not come specially within the provisions of para. 1.(*m*)

Zillah Judge in certain cases to take charge of property of a deceased British subject, and to report to Administrator General

4. Whenever any British subject may die leaving personal assets within the limits of the jurisdiction of a Zillah Judge, and no Will be found among the effects of the deceased, it is the duty of the Zillah Judge to report the circumstances without delay to the Administrator General of the Presidency, retaining the property under his charge until Letters of Administration be obtained by

(*k*) Cl. 7, Sec. 16, Reg. III., 1802.
(*l*) S. U. Pro. 20th May 1853.
(*m*) F. U. Diary, 7th August 1853.

the Administrator General or by some other person from the Supreme Court of Judicature, when the property should be delivered over to the person obtaining such Letters of Administration; or in the event of a Will being discovered, to the person who may obtain probate of the Will.(*n*)

5. The following rules were laid down by the Sudr Court for observance by the Zillah Courts, upon occasions of British subjects dying within their jurisdiction:

(1.) Upon the death of any British born subject, not being a Military Officer or Soldier in the service of her Majesty, or the East India Company, whether intestate or otherwise, except in the case of an Executor or Executrix appointed by the deceased, and upon such Executor or Executrix signifying to the Zillah Judge in writing, his, or her, intention to execute that Office, the effects of the deceased are to be secured by a Public Officer of the Court under the authority of the Judge of the Zillah in which the deceased's property is situated, within four and twenty hours from the time of the death; or, if the effects are at a distance from the Zillah Court, as soon as possible after the death shall have been known to the Subordinate Judge. All the plate, jewels and other valuables are to be brought for safe custody in the Treasury of the Court, and there kept till the sale or other disposition of them by the Executor or Administrator.

(2.) The Judge is without delay to cause to be made a correct inventory of the whole of the property and effects, mentioning especially, and in all cases, whether any and what amount of cash was found in the deceased's possession. The Judge is also to procure such information as to the surviving relations of the deceased, whether in India or elsewhere as can be obtained on the spot, and the same is to be entered in a book to be kept for that purpose to be entitled "Register of Estates," the page of every entry to be signed by the Judge, and, at the foot of every entry, the signatures of the Officers of the Court employed in taking the Inventory are, in their own proper handwriting, to be subscribed thereto, and such book should form a record; and a copy of such inventory and of such information should be forthwith forwarded to the Administrator General, such copy being attested as "a true copy from the entry in the Register."

(*n*) Sec. 54, Act VIII., 1855.

(3.) In the case of a Will, except as stated above where there may be an Executor or Executrix appointed by the deceased, and such Executor or Executrix may signify to the Judge in writing his, or her intention to execute that office, the Judge should, together with the copy of the Inventory above mentioned, forward to the Administrator General a copy of the Will. The Judge should also forward to the Executors, in case they are within the Presidency of Madras, a copy of the Inventory and of the Will.

(4.) The Judge should, at the request of the Administrator General when appointed Administrator, appoint a proper person or persons, to effect the disposal of the property of the deceased, and should attend, as nearly as he can, to the wishes of the said Administrator, expressed in writing.

(5.) When the Judge may direct a sale in pursuance of the request of the said Administrator, such sale must be by public auction to the highest bidder; the conditions of every such sale, unless otherwise specially directed by the said Administrator, being,

1st. The lot to be paid for before delivery to, and removal by, the purchasers.

2nd. All goods to be at the risk of the purchasers from the time of sale, and such as remain three days beyond the first issue of pay next following the sale, to be resold by similar public sale: the first purchaser to be held liable for any loss arising from such resale, and to forfeit any advantage together with commission.

(6.) Immediately after the sale, the account sale together with the names of the several purchasers should be entered "in the Register of Estates," and a copy of such account sale should be forthwith forwarded to the said Administrator, attested as directed in clause 2.

(7.) The Auctioneer should, in no case receive a greater percentage or remuneration, than 5 per cent, which should be paid by the Judge on the day on which the accounts of the estate are finally closed, if his accounts are correct, but not otherwise.

(8.) A Zillah Judge quitting, or being relieved from the charge of, his situation, should render to his successor, the accounts of every estate, whether of an Intestate or otherwise, the accounts and balance of which may not have been then already rendered to the said Administrator, and such successor is respon-

sible for the correctness of the accounts, unless, at the time of receiving charge of the Court, he objects to them, and brings such objection to the notice of the Administrator.

(9.) In case of any Zillah Judge dying, or being, by sickness, incapacitated from rendering any account, the Officer in charge of the Court, or, in his absence, the Nazir or Sheristadar of the Court formed into a Committee for that purpose, (which in such case they are required to do,) should take an account of all Estates of British born subjects deceased, whether of Intestates or otherwise, the accounts and balances of which may not have been then already rendered to the said Administrator, and should render the accounts taken, to the succeeding Judge.

(10.) Zillah Judges will be held responsible for the strict fulfilment of the several provisions of these Rules, and for any loss which may arise by a deviation therefrom.

(11.) The foregoing rules apply exclusively to British born subjects, the rules as to other Europeans are contained in Section XVI. Regulation III., of 1802.(o)

6. In Zillahs where there is a Subordinate Judge, the duties referred to in the above rules devolve on that Officer. When the Subordinate Zillah Court is presided over by a Principal Sudr Ameen perhaps the Zillah Judge should act; but the Sudr Court have ruled that either a Subordinate Judge or a Principal Sudr Ameen may take charge of the property of Europeans dying intestate.(p)

7. The provisions of para. 1 should form the mode of procedure when the Administrator General may decline to administer to the Estates of European British subjects.(q)

Estates at a distance from the Subordinate Zillah Court to be taken charge of by the chief Revenue, Judicial or Military authority on the spot.

8. Upon the death of any British born subject not being a Military Officer or Soldier in the service of H. M. or the E. I. Company, his effects, if they are at a distance from the Subordinate Zillah Court, are to be secured (in cases where no Executors or Executrix may be present at the place,) by the senior Revenue or Judicial European Officer, or, in their absence, by the District Moonsiff or Tahsildar, present on the spot; and on the Neilgherry Hills, and at Military Stations where no Civil Officer

(o) C. O. 12th May 1834.
(p) C. L. 9th October 1843.
(q) S. U. Dy. 18th May 1855.

is present, by the Commanding Officer, until such time as the Subordinate Judge may be able to adopt the measures prescribed in the rules laid down in para. 5.(r)

Extent of interference of Military Authorities in matters of Estates of Military Pensioners.

9. It is not competent to the Military Authorities to interfere in the matter of the Estates of Military Pensioners of any grade, further than, in particular cases when no Judicial functionary may be on the spot, securing the property and reporting the circumstance to such functionary, with a view to the adoption of the necessary steps for relieving the Military Authority from the charge of the Estate.(s)

What report to be made by Officers taking charge of Estates of Chelsea Pensioners.

10. All Officers, Civil and Military, who may take charge of the effects of a Chelsea Pensioner dying in the Mofussil, should report, when forwarding the proceeds to the Office of the Administrator General, or elsewhere, that the deceased was a Chelsea Pensioner, in order that the effects of all such Pensioners who may die in India, without any legal heirs or representatives, may be credited to the Crown, to be appropriated in liquidation of the expenses incurred for the funerals of Insolvent Pensioners.(t)

11. The Wills and effects of all deceased Pensioners of her Majesty's Service, when the heirs are in England, should be forwarded to the Secretary at War, through the Deputy Adjutant General of her Majesty's Forces.(u)

When Administrator General must administer to Estates of persons other than Mahomedans or Hindoos.

12. If any person, not being a Mahomedan or Hindoo, dies, whether within the Presidency or not, before or after the passing of Act VIII., of 1855, and, if a British subject, leaves assets exceeding the value of five hundred Rupees in any of the Provinces or places belonging to the Presidency; or, if not a British subject leaves personal assets exceeding five hundred Rupees within the local limits of the jurisdiction of the Supreme Court of Judicature, and no person, within one month after his death, applies for Probate of a will, or for any Letters of Administration of his Estate, the Administrator General of the Presidency must, within a reasonable time after he has had notice of the death of such person, and of his having left such assets as aforesaid, take such proceedings as may be necessary to obtain from the Supreme Court of Judicature Letters of Administration to the effects, either general-

(r) F. St. G. G. 1838, p. 272.
(s) F. St. G. G. 1844, p. 776.
(t) F. St. G. G. 1854, p. 5.
(u) E. M. C. 31st August 1854.

ly or with a Will annexed, as the case may require. But assets, which any person may be entitled to collect, receive or dispose of, by virtue of a certificate granted under Act XX., of 1841, are not to be deemed assets within the meaning of this para.(v)

Proviso.

Probate to be granted to Executor or next of kin appearing in the course of proceedings taken by Administrator General to obtain administration.

13. If, in the course of proceedings to obtain letters of Administration under the provisions of the above para, any Executor appointed by a Will of the deceased should appear according to the practice of the Court and prove the Will and accept the office of Executor; or if any person appear according to such practice and make out his claim to Letters of Administration as next of kin of the deceased, and give such security as may be required of him by law or by the practice of the Court, the Court should grant Probate of the Will or Letters of Administration accordingly, and should award to the Administrator General his costs of the proceedings so taken by him, to be paid out of the Estate as part of the testamentary expenses thereof.(w)

If no Executor or next of kin appear, or give necessary security, Administrator General to administer.

14. If no person appear according to the practice of the Court, and entitle himself to Probate of a Will, or to a grant of Letters of Administration, as next of kin of the deceased, or if the person who may entitle himself to a grant of Administration neglect to give such security as may be required of him by law or according to the practice of the Court, the Court should grant Letters of Administration to the Administrator General.(x)

Payments made or acts done by Administrator General prior to revocation of Administration upon production of a Will, to be deemed valid.

15. If any Letters of Administration, which may be granted as above, be revoked upon the production and proof of a Will, all payments made, or acts done by, or under, the authority of the Administrator General in pursuance of such Letters of Administration prior to the revocation thereof, which would have been valid under any Letters of Administration lawfully granted to him with such Will annexed, are valid, notwithstanding such revocation.(y)

16. If an Executor or next of kin of the deceased, who may not have been personally served with a citation, or had notice thereof in time to appear in pursuance of it, should establish, to the satisfaction of the Court, a claim to Probate of a Will

(v) Sec. 11, Act VIII, 1855.
(w) Sec. 16, Ibid.
(x) Sec. 17, Ibid.
(y) Sec. 20, Ibid.

or to Letters of Administration in preference to the Administrator General, any Letters of Administration which may be granted to the Administrator General, may be recalled and revoked, and Probate granted to such Executor, or Letters of Administration to such other person as aforesaid. But no Letters of Administration granted to the Administrator General can be revoked or recalled for the cause aforesaid, except in cases in which a Will or Codicil of the deceased may be proved, unless the application for that purpose be made within one year after the grant to the Administrator General, and the Court be satisfied that there has been no unreasonable delay in making the application, or in transmitting the authority under which the application may be made.(z)

In what cases Court may recall Administrator General's Administration, and grant Probate &c. to Executor, or next of kin.

17. If any Letters of Administration, which may be granted to the Administrator General may be revoked, the Court may order the costs of obtaining such Letters, and the whole or any part of any commission which would otherwise have been payable, together with the costs of the Administrator General in any proceedings taken to obtain such revocation, to be paid to, or retained by, the Administrator General out of any assets belonging to the Estate.(a)

Payment of costs to Administrator General when his Administration may be revoked.

18. The Administrator General of Madras is entitled to receive a commission of 5 per cent upon the amount or value of the assets which he may collect and distribute in due course of Administration.(b)

19. Whenever any person not being a Mahomedan or Hindoo, dies, whether within the Presidency or not, and whether before or after the passing of Act VIII., of 1855, and, if a British subject, leaves personal assets within any of the Provinces or places, belonging to the Presidency, or if not a British subject, leaves personal assets within the local limits of the jurisdiction of the Supreme Court of Judicature, and Letters of Administration of his effects are not taken out for three months after his death, and the Administrator General is satisfied that such effects do not exceed in the whole five hundred Rupees, he may, if he think fit, at any time before Administration of such effects is granted, grant to any person claiming a princi-

When Administrator General may grant Certificate.

(z) Sec. 21, Act VIII., 1855.
(a) Sec. 22, Ibid.
(b) Sec. 26, Ibid.

pal share of the effects of the deceased, Certificates under his hand, entitling the claimant to receive the sums or securities for money therein severally mentioned, belonging to the effects of the deceased, to the value of any sum not exceeding in the whole five hundred Rupees.(c)

He is not bound to grant Certificate, unless satisfied of claimant's title &c.

20. The Administrator General is not bound to grant any such certificate, unless he is satisfied of the title of the claimant and of the value of the effects of the deceased, either by the oath, affidavit or solemn affirmation of the claimant (which oath, affidavit or affirmation the Administrator General is authorized to administer or take,) or by such other evidence as he may require.(d)

Certificate with receipt annexed to be a sufficient discharge.

Proviso.

21. Any such certificate, with a receipt annexed under the hand of the person to whom the certificate may be granted, is a full discharge for payment or delivery to him or her of the money or security for money therein mentioned, to the person paying or delivering the same, but an Executor or Administrator of the deceased is not precluded from recovering from the person receiving the same, the amount remaining in his hands, after deducting the amount of all debts or other demands lawfully paid or discharged by him in due course of administration; and any creditor or claimant against the estate of the deceased is at liberty to recover his debt or claim out of the assets received by such person and remaining in his hands unadministered, in the same manner and to the same extent as if such person had obtained letters of Administration to the Estate of the deceased.(e)

Act VIII. 1855 not applicable to Estates of Soldiers or Sailors.

22. The Administrator General is not required to take proceedings to obtain Letters of Administration to the Estate or effects of any Officer or Soldier, or other person subject to any Articles of War, or to the Estate or effects of any Officer, Seaman or other person dying in the Marine service of the East India Company, called the Indian Navy, unless when the Administrator General is duly authorized or required so to do by the Military Secretary, or other Officer having similar powers with regard to the Estate or effects of any Officer, Seaman or other person dying in the Indian Navy, nor is any thing con-

(c) Sec. 43, Act VIII., 1855.
(d) Sec. 44, Ibid.
(e) Sec. 45, Ibid.

tained in the foregoing provisions of Act VIII., of 1855, to interfere with or alter the provisions of any Act of Parliament for regulating the payment of Regimental debts and the distribution of the effects of Officers and Soldiers dying in the service of the East India Company, or of any Articles of War or of any Act of Parliament relating to the Indian Navy.(*f*)

Procedure as to Estates at Military Bazar Stations.

23. Whenever Natives may die without heirs, or abscond, and, in either case, leave property within the limits of any Military Bazar Station, the Commanding Officer of that station should send a correct Inventory of the property to the nearest Subordinate Judge or Principal Sudr Ameen, as the case may be, who should proceed respecting it in the mode indicated in para. 1.(*g*)

24. When a Native Military Pensioner dies without heirs within the limits of a Military Bazar station and leaves property, the Commanding Officer, and not the Officer in charge of the Pensioners, should report the same to the nearest Subordinate Judge or Principal Sudr Ameen.(*h*)

General Superintendence of escheats vested in Board of Revenue.

25. The general superintendence of all Escheats is vested in the Board of Revenue, who should, through the Collector or other local Agent appointed by Government, inform themselves fully of all property of that description, and submit to Government their opinion as to the most expedient mode of disposing of it, and the same should be sold on the public account, or otherwise disposed of, as the Government may determine.(*i*)

Local Agents to ascertain particulars of Escheats and report to Board of Revenue.

26. The Collector or other local Agent should obtain full information from the public records, and by personal enquiries, respecting all Escheats, and report to the Board of Revenue any instance in which he may have reason to believe that lands or buildings, or the rent or revenues derived from lands, are unduly appropriated, being in all cases careful not to infringe any private rights, or to occasion unnecessary trouble or vexation to individuals.(*j*)

Local Agents liable to Civil prosecution.

27. Individuals deeming themselves aggrieved by any orders which may be passed by a Collector or other local Agent, are not precluded from suing in the mode and form prescribed in

(*f*) Sec. 57, Act VIII., 1855.
(*g*) Sec. 36, Reg. VII., 1832.
(*h*) S. U. Pro. 16th June 1847.
(*i*) Sec. 6 and 8, Reg. VII., 1817.
(*j*) Sec. 9, Ibid.

the Regulations, where the Government or Public Officers are parties, or under the general provisions of the Regulations, if the suit be brought against a competitor or other private person for the recovery of rights in the regular course of law, or for compensation in damages for any loss or injury supposed to have been unduly sustained by them.(*k*)

Cases in which the Zillah Courts may nominate Guardians.

28. In cases of Estates held by joint possessors and subject to an undivided assessment of the public revenue, where one or more of the joint possessors may die, leaving heirs incapacitated by minority, sex, or natural infirmity from the management of their inheritance without nominating by Will Guardians of the said heirs, the Collectors respectively should report the case to the Zillah Court; and the Court, upon such report from the Collectors or from any other credible persons, should proceed to examine the circumstances, and, after due inquiry, should forthwith nominate proper persons to be the Guardians of such disqualified heirs, to the end that injury may not arise to the property or persons of the said heirs by reason of delay. But such nominations are always subject to the confirmation or rejection of the Court of Sudr Adawlut.(*l*)

Guardians to give Security and execute Obligation.

29. Persons appointed to be Guardians, and accepting the trust, should give security for their personal appearance during the continuance of their trust, and should execute an obligation according to the following form:—

"I. A. B. having voluntarily accepted the office of Guardian of C, the disqualified proprietor of D, do hereby solemnly promise and engage to execute the duties committed to me, zealously and faithfully to the best of my judgment, and according to the Regulations. I will conscientiously appropriate the allowance granted for the maintenance, and (if the ward be a minor) for the education of my ward, to the benefit of the said ward; and will abstain from all other advantage than what may be allowed to me by due authority, directly or indirectly arising from my Office of Guardian; I also engage to render true and faithful accounts of all monies received by me on account of my ward, under the penalty of forfeiting treble the amount of any sums which may be proven to have been embezzled or misap-

(*k*) Sec. 14, Reg. VII., 1817. | (*l*) Sec. 20, Reg. V., 1804.

plied; and I do hereby bind myself, my heirs and successors to make good the said penalty upon due proof of my default."(m)

30. After executing this Obligation, persons appointed to be Guardians should be invested with their trust by a public Commission under the seal and signature of the Collector of the District.(n)

Commission to Guardian.

31. Where persons may not be found, who by reason of consanguinity, friendship, or other good cause, may be willing to execute the Office of Guardian gratuitously, a fixed salary should be allowed at the discretion of the Court of Wards, or of the Zillah Courts respectively, as the case may be, as a full compensation for the trouble and responsibility of the said Office.(o)

In certain cases a fixed salary to be allowed to Guardians.

32. It is competent to Guardians regularly appointed, to receive the allowance appropriated to the use of their Wards, and to appropriate it at their discretion for the good and benefit of the Wards; subject, however, to the inspection and control of the Collectors and Zillah Judges, and ultimately of the Court of Wards and of the Court of Sudr Adawlut.(p)

Allowance for the benefit of Wards.

33. Guardians appointed under the authority of Zillah Judges and of the Court of Wards possess the same powers as Guardians otherwise appointed.(q)

Powers of Guardians.

34. The duration of the Office of Guardian cannot continue longer than the eighteenth year of the age of Wards being Minors, provided that such Wards be not incapacitated by sex or natural infirmity from administering their own affairs.(r)

Duration of office.

35. Guardians must choose and recommend proper servants to be employed in the service of their Wards, subject to the approval of the Collectors and of the Court of Wards, or, as the case may be, to the approval of the Zillah Judges and of the Court of Sudr Adawlut. But the expence of the wages of such servants should be defrayed from the funds appointed for the maintenance of Wards.(s)

Servants for Wards.

36. Guardians must deliver monthly accounts to the Collectors of their receipts and disbursements, which accounts are liable to revision and retrenchment by the Collectors.(t)

Monthly accounts to be submitted to Collectors.

(m) Cl. 1, Sec. 21, Reg. V., 1804.
(n) Cl. 1, Ibid.
(o) Cl. 2, Ibid.
(p) Cl. 3, Ibid.
(q) Cl. 4, Ibid.
(r) Cl 5, Ibid.
(s) Cl. 6, Ibid.
(t) Cl. 7, Ibid.

Annual accounts also to be furnished supported by vouchers.

37. Guardians must also furnish complete annual accounts to the Collectors, supported by good and true vouchers, and attested on oath, unless the Court of Wards should see proper to dispense with such oath, in which case such annual accounts should be attested by a solemn declaration of their correctness.(u)

Education of Wards.

38. In cases of male minors, female relations should not have charge of such minors after they shall have respectively attained the age of seven years; at which age, proper teachers should be procured and appointed by the Guardians for the education of their Wards in a manner suitable to their rank and condition in life; but the appointment of such teachers is subject to the approval of the Court of Wards, or, as the case may be, of the Court of Sudr Adawlut; and the progress of the education of male minors is at all times liable to the inquiries and inspection of Collectors, or, as the case may be, of the Zillah Judges.(v)

39. The Guardians of female minors must also provide for the proper education of their wards.(w)

Authentication of papers.

40. The Guardians and Managers of disqualified persons should authenticate papers by their own seals and signatures, and not otherwise. The seals of Wards, together with the seal of their deceased parents should be delivered to the Collectors and lodged in their Treasuries.(x)

41. The provisions of paras. 28 to 40 are applicable to property of every description not subject to the jurisdiction of the Court of Wards, and to the heirs of single as well as joint possessors of estates, real and personal.(y)

Manager of property may mortgage it.

42. The managing possessor of property is, under the Hindoo Law, vested with power to mortgage it so far as may be necessary to prevent its entire loss, whether that property is exclusively his own, or managed for the benefit of himself and parceners.(z)

43. It is the bounden duty of the Manager of an Estate,

(u) Cl. 8, Reg. V., 1804.
(v) Cl. 9, Ibid.
(w) Cl 10, Ibid.
(x) Sec. 22, Ibid.
(y) Sec. 3, Reg. X., of 1831.
(z) D. C. U. A. 7, of 1831.

to keep its expenses within the proportion of the income allotted for the support of the disqualified proprietor.(a)

44. Injurious transfers of the property of a minor by the Guardian is invalid, unless confirmed by the minor on his attaining his majority.(b)

45. A Manager who wastes the resources of a minor, or allows the minor to do so, cannot expect to be reimbursed.(c)

Personal non-liability of minor for debts contracted by his Guardian. Estate alone liable.

46. A minor's consent to a claim and promise to satisfy it, are not binding upon him; nor can a minor be held *personally* responsible in the first instance to the parties of whom his Guardian may have borrowed money, though his Estate is eventually answerable for the payment of all debts contracted by his Guardian from necessity and for his evident benefit.(d)

47. Payments to the Mother as the Guardian of a minor, which may not have been made for the use of the minor, cannot be recovered from him on his coming of age.(e)

Executors to Mahomedans and others not being disqualified land-holders may execute their trust without applying to any Court or Public Officer for permission.

48. In all cases of a Mussulman, or other person subject to the jurisdiction of the Zillah Courts, having, at his death, left a Will, and appointed an Executor or Executors to carry the same into effect, and where the heir to the deceased may not be a disqualified land-holder, subject to the superintendence of the Court of Wards, the Executors so appointed are to take charge of the Estate of the deceased, and proceed in the execution of their trust according to the Will of the deceased and the laws and usages of the country, without any application to the Judge of the Court of Adawlut, or any other Officer of Government, for his sanction; and the Courts of Justice are prohibited from interfering in such cases, except on a regular complaint against the Executors for a breach of trust, or otherwise; when they are to take cognizance of such complaint, in common with all others of a Civil nature, under the general rule contained in Section 5, Regulation II., of 1802, and proceed thereupon according to the Regulations, taking the opinion of their Law Officers upon any legal exception to the Executors, as well as upon the provision to be made for the administration of the Estate, in the event of the appointed

The Courts cannot interfere in such cases except on a regular complaint.

(a) D. S. U. A. 56, of 1847.
(b) S. U. Pro. 7th November 1822.
(c) D. S. U. S. A. 56, of 1847.
(d) Ibid 46 of 1850.
I, of 1812.
(e) Ibid 2, of 1833.

Executors being set aside, and generally upon all points of law that may occur; with respect to which the Judge is to be guided by the law of the parties, as expounded by the Law Officers, subject to any modifications enacted by the Government.(*f*) The provisions contained in this para are not however applicable to Hindoos.(*g*)

49. Executors and Administrators are not prohibited from purchasing at an auction any part of the Estates to which they administer.(*h*)

Heirs of persons dyng intestate, or the Guardians of heirs under age, can succeed to the Estate without applying to the Court.

50. In case of a Hindoo, Mussulman or other person subject to the jurisdiction of the Zillah Courts dying intestate, but leaving a son or other heir, who by the laws of the country may be entitled to succeed to the whole Estate of the deceased; such heir, if of age, and competent to take the possession and management of the Estate; or if under age, or incompetent, and not under the superintendence of the Court of Wards, his Guardian or nearest of kin, who, by special appointment or by the law and usage of the country, may be authorized to act for him, is not required to apply to the Courts for permission to take possession of the Estate of the deceased, as far as the same can be done without violence, and the Courts are restricted from interference in such cases, except a regular complaint be preferred; when they are to proceed thereupon according to the general Regulations.(*i*)

The Courts cannot interfere in such cases except on a regular complaint.

Rules where there may be more heirs than one, and where the right of succession may be disputed.

51. If there be more heirs than one to the Estate of a person dying intestate, and they can agree amongst themselves in the appointment of a common Manager, they are at liberty to take possession; and the Courts are restricted from interference, without a regular complaint, as in the case of a single heir; but if the right of succession to the Estate be disputed between several claimants, one or more of whom may have taken possession, the Subordinate Zillah Court, on a regular suit being preferred by the party out of possession, is to take good and sufficient security from the party or parties in possession for his or their compliance with the judgment that may be passed in the suit; or, in default of such security being given within a reasonable period, may give possession, until the suit may be determined, to the other claimant or claimants who may

(*f*) Cl. 2, Sec. 16, Reg. III., 1802.
(*g*) Sec. 2, Reg. V, 1829.
(*h*) S. U. Dy. 14th July 1828.
(*i*) Cl. 3, Sec. 16, Reg. III., 1802.

furnish such security, declaring at the same time that such possession is not in any degree to affect the right of property at issue between the parties, but to be considered merely as an administration to the Estate for the benefit of the heirs who may, on investigation, be found entitled to succeed.(*j*)

In what cases the Court may appoint an Administrator to the Estate of an Intestate.

52. In the event of none of the claimants to the Estate of a person dying intestate being able to give the security above mentioned; and in all cases wherein there may be no person authorized and willing to take charge of the landed Estate of a person deceased, the Subordinate Zillah Court within whose jurisdiction such estate may be situated (or in which the deceased may have resided, or the principal part of the Estate may lie, in the event of its being situated within two or more jurisdictions) is authorized to appoint an Administrator for the due care and management of such Estate, until, in the former case, the suit depending between the several claimants has been determined, or in the latter case, until the legal heir to the Estate, or other person entitled to receive charge thereof as Executor, Administrator, or otherwise, attends and claims the same; when, if the Court be satisfied that the claim is well founded, or if the same be established after any inquiry that may appear necessary, the Administrator appointed by the Court should deliver over the Estate to him, with a full and just account of all receipts and disbursements during the period of his administration.(*k*)

53. It is competent to a Subordinate Zillah Court under the provisions of the preceding para to take temporary charge of a house, the property of an individual who died intestate, upon an application being made for that purpose; but the Court cannot proceed to dispose of it, as in the case of personal property: Should no heir appear, it will eventually fall within the provisions of para 25.(*l*)

Administrator to furnish security.

54. In all instances of an Administrator being appointed under the aforesaid provisions of Sec. 16, Reg. III., 1802, he must, previous to entering upon the execution of his Office, give good security for the faithful discharge of his trust, in a sum proportionate to the extent thereof; and the Judge appointing him

(*j*) Cl. 4, Sec. 16, Reg. III., 1802.
(*k*) 5, Ibid.
(*l*) S. U. Dy. 19th June 1835.

is authorized to fix for him (subject to the approbation of the Court of Sudr Adawlut, to whom a report is to be made in such instances) an adequate personal allowance, to be paid out of the proceeds of the Estate, and to be a percentage thereupon after deducting the expenses of management.(*m*)

Mode of fixin his allowance.

55. The foregoing rules respecting the Estates of Hindoos dying intestate are equally applicable to the cases of Hindoos dying and leaving Wills.(*n*)

Wills of Hindoos invalid unless in conformity with Hindoo law.

56. Wills left by Hindoos have no legal force whatever, except so far as their contents may be in conformity with the provisions of the Hindoo Law, according to the authorities prevalent in the Provinces in which they were made.(*o*)

57. Under the Hindoo law, a Hindoo is allowed to dispose, by Will, of property which he could have alienated during his life time by any other instrument.(*p*)

58. A Hindoo cannot execute a Will, setting aside the right of his wife and bequeathing the bulk of his property to a person of a different family.(*q*)

Claimants to property of deceased persons may apply to Zillah Judge.

59. Whenever a person dies leaving property, moveable or immoveable, it is lawful for any person claiming a right by succession thereto or to any portion thereof, to make application to the Judge of the Zillah in which any part of the property is found or situate, for relief, either after actual possession has been taken by another person, or when forcible means of seizing possession are apprehended.(*r*)

Agents and the Court of Wards may likewise apply.

60. It is also lawful for any agent, relative, or near friend, or for the Court of Wards in cases within their cognizance, in the event of any minor, disqualified or absent person being entitled by succession to such property, to make the like application for relief (*s*)

What inquiry the Judge should make.

61. The Zillah Judge to whom such application may be made should, in the first place, inquire by the solemn declaration of the complainant, and by witnesses and documents, at his discretion, whether there are strong reasons for believing that the party

(*m*) Cl. 6, Sec. 16, Reg. III., 1809.
(*n*) Sec. 3, Reg. V., 1829.
(*o*) Sec. 4, Ibid.
(*p*) D. S. U. S. A. 3 of 1824.
(*q*) Ibid 65 of 1844.
(*r*) Sec. 1, Act XIX., 1841.
(*s*) Sec. 2, Ibid.

in possession, or taking forcible means for seizing possession, has no lawful title, and that the applicant, or the person on whose behalf he applies, is really entitled, and is likely to be materially prejudiced if left to the ordinary remedy of a regular suit, and that the application is made bonâ fide.(t)

Judge may decide summarily the right to possession.

62. In case the Judge should be satisfied of the existence of such strong ground of belief, but not otherwise, he should cite the party complained of, and give notice of vacant or disturbed possession, by publication, and after the expiration of a reasonable time should determine summarily the right to possession (subject to regular suit as hereunder mentioned) and should deliver possession accordingly. But the Judge has the power to appoint an Officer who may take an inventory of effects, and seal or otherwise secure the same, upon being applied to for the purpose, without delay, whether he has concluded the enquiry necessary for citing the party complained of, or not.(u)

He can appoint an officer to take temporary charge.

Judge may appoint a Curator.

63. In case it should further appear, upon such application and examination, that danger is to be apprehended of the misappropriation or waste of the property before the summary suit can be determined, and that the delay in obtaining security from the party in possession, or that the insufficiency thereof, is likely to expose the party out of possession to considerable risk, provided he be the lawful owner, it is lawful for the Zillah Judge to appoint one or more Curators with the powers below-mentioned, whose authority should continue according to the terms of his or their respective appointments, and in no case beyond the determination of the summary suit and the confirmation or delivery of possession in consequence thereof. But in the case of land, the Judge may delegate to the Collector, or to his Officer, the powers of a Curator, and every appointment of a Curator in respect of any property should be duly published.(v)

In cases of land the Collector may be the Curator.

Curator's Sunnud.

64. A Sunnud according to the following form should be furnished to the Curator by the Zillah Judge:

SUNNUD TO A. B.

Whereas you, A. B., have been appointed under the provisions of Act XIX of 1841 to take temporary possession of the

(t) Sec. 3, Act XIX., 1841.
(u) Sec. 4, Ibid.
(v) Sec. 5, Ibid

property of the late C. D., you shall diligently and faithfully discharge the trust committed to you, and act in every respect according to the instructions given you, and to the best of your judgment for the interest of the proprietors. You shall obey all orders of the Judge regarding the institution or the defence of suits, concerning or connected with the property committed to your charge. You shall further receive payments of debts and rents due to the Estate of the said C. D., until otherwise ordered, such power of collecting debts however to cease on the granting of a certificate under the provisions of Act XX of 1841, or in the event of Probate, or Letters of Administration to the Estate of the said C. D., being granted by Her Majesty's Supreme Court of Judicature; and you shall give acquittances for all sums of money collected by you, as debts or rents, on account of the Estate of the said C. D., and you shall render a true and just account of whatever may be received by you on account of the said Estate, filing, at as early a period as practicable, an inventory of the property received by you, and also, monthly, in the Judge's Office, accounts in abstract, and at the end of every three months; and, on giving up possession of the property, accounts in detail of your administration of the said property. You shall further adhere strictly to such laws as may be passed for the guidance of Curators, by the Governor General in Council, and to such orders as you may receive from the Judge; you shall derive no personal advantage whatever, directly or indirectly, from the trust committed to you, beyond the allowance hereby granted to you of 5 per centum on the personal property and on the annual profits of the real property placed under your charge; and you shall exercise the power of Curator under this Sunnud until the determination of the summary suit now pending respecting the right to possession of the said property, or until otherwise ordered by this Court.

Schedule of property to be entered here.(w)

For what period possession may be given to Curator.

65. The Zillah Judge has the power to authorize such Curator, either to take possession of the property generally, or until security be given by the party in possesson, or until inventories of the property have been made, or for any other purpose

(w) C. O. 13th Nov. 1843. No. 86.

necessary for securing the property from misappropriation or waste by the party in possession. But it is entirely discretionary with the Judge, to allow the party in possession to continue in such possession on giving security, or not; and any continuance in possession is subject to such orders as the Judge may issue touching inventories, or the securing of deeds or other effects.(x)

Party may be continued in possession.

66. The Judge should exact from the Curator security for the faithful discharge of his trust, or for rendering satisfactory accounts of the same, and may authorize him to receive out of the property such remuneration as may appear reasonable, but in no case exceeding five per centum on the personal property, and on the annual profits of the real property. All surplus monies realized by the Curator must be paid into Court, and invested in public securities for the benefit of the persons entitled thereto upon adjudication of the summary suit. But although security may be required from the Curator with all reasonable dispatch, and, where it is practicable, may be taken generally to answer all cases for which the person may be afterwards appointed Curator, yet no delay in the taking of security can prevent the Judge from immediately investing the Curator with the powers of his office.(y)

Securiy to be given by Curator.

His remuneration.

Investment of surplus monies in public securities.

67. The following forms of Engagement and Security Bond should be executed by the Curator:

Form of Curator's Engagement and of Security Bond.

FORM OF ENGAGEMENT.

I, A. B., having been appointed by the Judge of the Zillah of ———, under the provisions of Act XIX of 1841 to take temporary possession of the property of the late C. D., do hereby solemnly promise and engage, diligently and faithfully to discharge the trust committed to me, and to act, in every respect, according to the instructions given me, and to the best of my judgment, for the interest of the proprietors. I also promise to obey all orders of the Judge regarding the institution or defence of suits, concerning or connected with the property committed to my charge. I further promise and engage to give acquittances for all sums of money collected by me, or debts or rents on account of the Estate of the said C. D., and to render a true and just account of whatever may be received by me on

(x) Sec. 6, Act XIX., 1841.

(y) Sec. 7, Ibid.

account of the said Estate, filing at the earliest practicable period, an inventory of the property received by me, and also, monthly, in the Judge's Office, accounts in abstract, and at the end of every three months; and on giving up possession of the property, accounts in detail, of my administration of the said property. I further promise and engage strictly to adhere to such laws as may be passed, for the guidance of Curators, by the Governor General in Council, and to such orders as I may receive from the Judge, and to derive no personal advantage whatever, directly or indirectly, from the trust committed to me, beyond the allowance granted to me as stated in my sunnud of appointment.

A. B.

FORM OF SECURITY BOND.

Whereas A. B. has been appointed by the Judge of the Zillah of———, under the provisions of Act XIX of 1841, to take possession of the property of C. D., deceased, I, E. F., do hereby engage and bind myself to stand security, and to be answerable for the faithful discharge of his trust by the said A. B., agreeably to the terms of his sunnud of appointment, a copy of which has been duly delivered to me. I also bind myself, my heirs and successors, not to sell, give or otherwise transfer or dispose of the property mentioned in the annexed Schedule, which I hereby pledge for the purpose of this engagement, until the conditions thereof have been completely fulfilled.

E. F.

Schedule of property to be entered here.(z)

In cases of land, what communication the Judge should hold with the Curator.

68. Where the Estate of the deceased person may consist wholly, or in part, of land paying revenue to Government, in all matters regarding the propriety of citing the party in possession, of appointing a Curator, and of nominating individuals to that appointment, the Zillah Judge should demand a report from the Collector, who should furnish the same. In cases of urgency, the Judge may proceed, in the first instance, without such report, and he is not obliged to act in conformity thereto; but, in cases of his acting otherwise than according to such report, he should immediately forward a statement of his reasons to the Court of Sudr Adawlut, which Court, if dissatisfied with such

(z) C. O. 13th Nov. 1843. No. 86.

reasons, should direct the Judge to proceed conformably to the report of the Collector.(a)

Curator may conduct suits on behalf of Estate.

69. The Curator is subject to all orders of the Zillah Judge regarding the institution or the defence of suits, and all suits should be instituted or defended in the name of the Curator on behalf of the Estate. An express authority however is requisite in the Sunnud of the Curator's appointment, for the collection of debts or rents; and such express authority will enable the Curator to give a full acquittance for any sums of money received by virtue thereof.(b)

Judge may grant allowance to claimant pending inquiry.

70. Pending the custody of the property by the Curator, it is lawful for the Zillah Judge to make such allowances to parties having a *primâ facie* right thereto, as, upon a summary investigation of the rights and circumstances of the parties interested, he may consider necessary, taking, at his discretion, security for the repayment thereof with interest, in case the party may, upon the adjudication of the summary suit, appear not to be entitled thereto.(c)

When Curator should render accounts in abstract and detail.

71. The Curator must file monthly accounts in abstract, and at the period of every three months, if his administration last so long; and upon giving up the possession of the property, he must file a detailed account of his administration to the satisfaction of the Zillah Judge.(d)

Curator's accounts open to inspection.

72. The accounts of the Curator should be open to the inspection of all parties interested; and it is competent for any such interested party to appoint a separate person to keep a duplicate account of all receipts and payments by such Curator. And if it be found that the accounts of any such Curator are in arrear, or if they be erroneous or incomplete, or if the Curator do not produce them whenever he may be ordered to do so by the Judge, he is liable to a fine not exceeding One thousand Rupees for every such default.(e)

Penalty for false accounts, or for delay in rendering.

73. After the Judge of any Zillah has appointed a Curator, such appointment precludes the Judge of any other Zillah from appointing any other Curator, provided the first appointment be in respect of the whole of the property of the deceased. But if

(a) Sec. 8, Act XIX., 1841.
(b) Sec. 9, Ibid.
(c) Sec. 10, Ibid.
(d) Sec. 11, Ibid.
(e) Sec. 12, Ibid.

In what cases several Curators may be appointed.

the appointment be only in respect of a portion of the property of the deceased, this will not preclude the appointment, within the same Presidency, of another Curator in respect of the residue of any portion thereof. But no Judge can appoint a Curator, or entertain a summary suit, in respect of property which is the subject of a summary suit previously instituted under these provisions before another Judge; and, if two or more Curators be appointed by different Judges for several parts of an Estate, it is lawful for the Sudr Udalut to make such order as it may think fit for the appointment of one Curator of the whole property.(*f*)

Proviso.

Limitation.

74. The application mentioned in paras 59 and 60 must be made within six months of the decease of the proprietor, whose property is claimed by right in succession.(*g*)

Directions of deceased proprietors to be attended to.

75. The foregoing provisions of Act XIX of 1841, cannot be put in force to contravene any public act of settlement. Neither in cases in which the deceased proprietor may have given legal directions for the possession of his property after his decease, in the event of minority or otherwise, in opposition to such directions; but, in every such case, so soon as the Judge, having jurisdiction over the property of a deceased person, may be satisfied of the existence of such directions, he must give effect thereto.(*h*)

Reservation of the rights of the Court of Wards.

76. The said Act cannot be enforced for the purpose of disturbing the possession of the Court of Wards of any Presidency, and in case a minor, or other disqualified person, whose property may be subject to the Court of Wards, may be the party on whose behalf application is made under the Act, the Zillah Judge, if he determine to cite the party in possession and appoint a Curator, must invest the Court of Wards with the Curatorship of the Estate pending the suit, without taking the security aforesaid; and in case the minor or other disqualified person may, upon the adjudication of the summary suit, appear to be entitled to the property, possession must be delivered to the Court of Wards.(*i*)

Summary decision final as to possession.

77. The decision of the Zillah Judge upon the summary suit has no other effect than that of settling the actual pos-

(*f*) Sec. 13, Act XIX., 1841.
(*g*) Sec. 14, Ibid.
(*h*) Sec. 15, Ibid.
(*i*) Sec. 16, Ibid.

session; but for this purpose it is final, not subject to any appeal or order for review.(j)

78. Nothing above contained can prevent a regular suit being laid, either by the party whose application may have been rejected, before or after citing the party in possession, or by the party who may have been evicted from the possession.(k)

No bar to regular suit.

79. The Government may appoint public Curators for any District or number of Districts: and the Judge having jurisdiction must nominate such public Curator or Curators in all cases where the choice of a Curator is left discretionary with him under the provisions already stated.(l)

Government may appoint local Curators.

80. Where Executors named in a Will refuse to act, any person claiming a succession to the estate should apply to the Zillah Judge under Act XIX of 1841.(m)

81. When a Collector, on behalf of Government, assumes charge of the property of a person dying intestate, and objects to the validity of a claim advanced to such property, he should apply to the Zillah Judge for his interference under the above Act.(n)

82. A Magistrate cannot interfere to determine the right of possession in the case of an individual dying possessed of property; such cases should, under para 62, be determined by the Zillah Judge.(o)

83. The existence of a mere suspicion that a party has concealed certain property of a person deceased is insufficient, under Act XIX of 1841, to warrant the seizure of the person of such party in order to enforce the production of the property concealed.(p)

84. Act XIX of 1841 is not applicable when parties do not found their title to property as *heirs*, but as holding possession in their own rights; such cases should be decided by civil action.(q)

85. Claims to succession to property under Act XIX of 1841 cannot be referred to a Punchayet, but should be personally enquired into by the Zillah Judge.(r)

(j) Sec. 18, Ibid.
(k) Sec. 17, Ibid.
(l) Sec. 19, Ibid.
(m) S. U. Dy. 14th January 1847.
(n) S. U. Pro. 18th November 1847.
(o) F. U. Pro. 18th Dec. 1849.
(p) S. U. Pro. 1st Dec. 1845.
(q) S. U. Pro. 16th Nov. 1846.
(r) S. U. Pro. 6th June 1851.

Construction of Regulation XXV., 1802.

86. It is plainly deducible from Regulation XXV, of 1802, that, prior to the fixing of the permanent assessment, succession to Zemindary tenures was not governed exclusively by the laws of inheritance, but that the ruling power created, tolerated, abolished or disposed of those tenures as might be considered most expedient for the purpose of realizing the public revenue due from the lands. It was held therefore that the British Government, in rejecting the claims of one party to a particular Zemindary, and granting it to another, exercised a right which, according to the usage of the country, was vested in the Ruling Power.(s)

87. A Zemindary granted to an individual by the Government was held to be ancestral property, because the grant was expressly made to him, in lieu of his former privileges, which were manifestly privileges that had descended to him from his ancestors: the Estate in fact was nothing more than the wreck of the possessions enjoyed by his forefathers, and as such he was not competent under the Hindoo law to divest his heirs of their right of succession.(t)

88. The inheritance of real property does not render the subsequent accumulation of real or personal property liable to be considered ancestral property.(u)

89. Where two undivided brothers had successively held a Zemindary and died without male issue, it was ruled that the senior widow of the last holder was entitled to succeed to the property, and that the widow of the previous holder (the elder brother who had first died) was entitled only to maintenance.(v)

Hindoo law of inheritance.

90. By the Hindoo law prevalent in the Madras Presidency, the widow of an undivided brother has no right to her husband's property, which goes to his surviving brother: she is entitled only to maintenance.(w)

91. Nor can a Hindoo widow claim a share in undivided ancestral property, or be considered as co-parcener of the Estate. If undivided ancestral property has descended to an adopted son, *his* widow, on his death without male issue, succeeds to it to the exclusion of the adoptive widowed mother.(x)

(s) D. S. U. S. A. 13 of 1813, and 14 of 1817.
(t) Ibid 7 of 1823.
(u) Ibid 9 of 1852.
(v) Ibid 1 of 1835.
(w) Ibid 11 of 1827.
(x) Ibid 12 of 1818.

92. A Hindoo widow is however entitled to succeed to the property of her deceased husband in preference to the daughter.(*y*)

93. The eldest widow of a Hindoo succeeds to her husband's Estate in preference to the other widows who, during her life-time, can claim only maintenance. The second widow is entitled to succeed on the death of the first; and the eldest of two widows, whose husband dies leaving no sons nor grandsons, cannot, during her life, constitute by deed any person, other than the second widow, her heir and successor.(*z*)

When an eldest son succeeds.

94. The exclusive right of succession of an eldest son is limited to Regalities and ancient Zemindaries, when the common Hindoo law of inheritance gives place to the usage of the country, or the pleasure of the Government. The usage existing in Tinnevelly, which gives the right of succession to the eldest son, does not affect Zemindaries or Mootahs acquired by recent purchase, but is applicable only to Regalities and *ancient* Zemindaries.(*a*)

95. When two sons of one common ancestor succeed to ancestral property, and one of those sons dies without male issue, the surviving son, and not the widow or daughter of the deceased, is according to Hindoo law entitled to the succession.(*b*)

96. The sons of a Hindoo who divided his property during his life-time between himself and them, viz. one share for each of the sons, and one for himself, his wife and daughters; have no claim, after his demise, to the share reserved, which the widow and daughter succeed to.(*c*)

When Bastards succeed.

97. Under the Hindoo law, the illegitimate sons of a Bastard succeed to the property of their father to the total exclusion of the legitimate sons of his brother, also a bastard (*d*)

98. Expulsion from caste consequent on carnal intercourse with a pariah woman entails upon a Soodra the forfeiture of his patrimonial inheritance.(*e*)

99. The property of a Hindoo wife in her own right is inheritable by *her* heirs, not her husband's.(*f*)

(*y*) S. U. Pro. 1st July 1833.
(*z*) Ibid 5 of 1824.
(*a*) Ibid 2 of 1846.
(*b*) Ibid 14 of 1824.
(*c*) Ibid 3 of 1829.
(*d*) Ibid 31 of 1848.
(*e*) Ibid 13 of 1845.
(*f*) S. U. Pro. 18th May 1831.

100. A daughter who has male issue has greater propinquity than a daughter who has no issue, and the former is therefore entitled, according to Hindoo law, to inherit the Estate of the deceased father in the absence of other heirs.(*g*)

101. It has been held that the property acquired by a person after he became a Sunneassy, or recluse, devolves on his disciple, and not on his wife, whose right ceases after her husband entered into the religious order.(*h*)

Succession in Malabar.

102. The succession to the property of a deceased Mussulman in Malabar rests in his son according to the Mahomedan law of inheritance, to the exclusion of his nephews; but by certain local usage of Malabar, observed chiefly among the Hindoos, the succession is vested in the nephew.(*i*)

Alienation of property by Hindoos.

103. Under the Hindoo law a man cannot alienate the whole of his property to another, so long as he is able to beget children, but he may alienate a small portion thereof, if by so doing, he does not deprive his issue then born, or that might be born, of the means of support.(*j*)

104. If property, which a Hindoo could legally alienate, have been given to his wife as streedhana during his life-time, she has an entire right to the enjoyment and disposal of the same.(*k*)

105. A Hindoo cannot alienate the whole of his property to his wife as dhanum or dowry for her maintenance, and thus deprive himself and his heirs.(*l*)

106. The alienation in perpetuity of a self-acquired village to one of his nearest male relations by the owner, without his wife's consent, was held to be valid, due provision having been made for the maintenance of his wife in the event of his demise.(*m*)

An undivided member may claim division of personal property.

107. A member of an undivided family has an unquestionable right, under the Hindoo law, to claim a division of the personal property belonging to the family.(*n*)

108. A landed Estate which had for upwards of 300 years descended from father to son according to the rules of primogeniture, is not liable to division.(*o*)

(*g*) D. S. U. S. A. 25 of 1851.
(*h*) S. U. Dy. 4th Nov. 1846.
(*i*) D. S. U. S. A. 5 of 1809.
(*j*) Ibid 5 of 1851.
(*k*) Ibid 23 of 1852.
(*l*) Ibid 2 of 1853.
(*m*) Ibid 10 of 1828.
(*n*) Ibid 64 of 1848.
(*o*) Ibid 64 of 1848.

109. It is only when dissensions exist among the co-parceners of an undivided Estate and the interests of minors are in consequence at stake, that the Courts can interfere to save them their shares.(*p*)

110. A Soodra cannot execute a Deed of division of his self-acquired property, allotting a portion to his adopted son and the remainder to his wife and daughter; nor is a Will made in accordance therewith valid; but, after giving the son his proper share (viz. one-third if the property be ancestral, and one-half if self-acquired,) the residue may be given to the wife and daughter out of affection, provided the gift embraces only personal and not real property which, during the life time of the son, cannot be given away without his consent.(*q*)

111. It has been held that the mere existence of a Deed of division is insufficient to constitute a divided property, but the members must have actually divided the property, each taking possession of his alloted share.(*r*)

When sale of undivided property is legal.

112. The sale of property of an undivided Hindoo family is not valid, unless proved to have been made for the benefit of the family.(*s*)

113. It is not competent to a party holding stanom property under a temporary tenure to alienate its revenue.(*t*)

Hindoo widow's right to alienate.

114. A Hindoo widow is competent to dispose of the personal property inherited by her from her late husband; but she only has a life interest in his real Estate, and cannot alienate it except (with the consent of the heirs) for religious purposes, for the payment of family debts or for her necessary subsistence.(*u*)

115. Property assigned to a wife as dhanum or dowry for her maintenance, is not disposable by Will, but descends to the heirs at law.(*v*)

116. No person forfeits his rights of inheritance or his property by reason of his having renounced, or been excluded from the communion of any religion, or been deprived of caste.(*w*)

(*p*) D. S. U. S. A. 49 of 1850.
(*q*) Ibid 9 of 1852.
(*r*) Ibid 10 of 1852.
(*s*) Ibid 21 of 1852.
(*t*) Ibid 63 of 1852.
(*u*) 62 of 1847.
5 of 1849.
23 of 1849.
31 of 1852.
(*v*) Ibid 2 of 1853.
(*w*) Act XXI., 1850.

117. It has been ruled that of the property left by a female, a convert from the Hindoo to the Christian religion, that acquired previous to conversion goes to her Hindoo heirs, and that subsequently thereto to whomsoever designated by her.(x)

No. debt recoverable from an estate without a Certificate.

118. No debtor of any deceased Hindoo, Mahomedan or other person not usually designated as a British subject can be compelled in any Court to pay his debt to any person claiming to be entitled to the effects of any deceased person, or any part thereof, except on the production of a Certificate (to be obtained in the manner hereunder mentioned,) or of a Probate, or Letters of Administration; unless the Court be of opinion that payment of the debt is withheld from fraudulent or vexatious motives, and not from any reasonable doubt as to the party entitled.(y)

Mode of obtaining Certificate.

119. The Zillah Judge, within whose jurisdiction any part of the property of the deceased may be found, has authority to grant the Certificate. The applicant in his Petition should set forth his title. If unable to attend in person he must move the Court through one of the Vakeels, and not by an Attorney or Agent. The Judge should issue notice of application, inviting claimants and fixing a day for hearing the Petition, and upon the appointed day, or as soon after as may be convenient, should determine the right to the Certificate, and grant the same accordingly, in the following form:

To A. B.

Whereas, in pursuance of the orders of this Conrt dated the ————, in the matter of the Estate of the late C. D., this Certificate is granted to you agreeably to the provisions of Act XX of 1841; you are hereby authorized and empowered to collect all debts due to the Estate of the said C. D., giving acquittances for all sums received by you.

You are further empowered to receive interest on Government Notes and dividends, or on shares of any Bank or parts thereof belonging to the said Estate, and to negotiate such securities. You are also empowered to receive a share of such interest or dividends that may be due to the said Estate, or to negotiate a share of such securities.

(x) S. U. Pro. 20th Feb. 1843.

(y) Sec. 1 and 15 Act XX., 1841. Act VIII., 1842.

You shall further adhere strictly to such laws as have been or may be passed by the Governor General in Council for the guidance of persons holding certificates for the collection of debts due to the Estates of deceased persons.

L. S.

———————

Judge.(z)

Effect of Certificate.

120. The Certificate of the Zillah Judge is conclusive of the representative title against all debtors to the deceased, and affords full indemnity to all debtors paying their debts to the person in whose favor the Certificate has been granted.(a)

Security from Grantee of certificate.

121. The Zillah Judge may take such security as he shall think necessary from any person to whom he may grant a Certificate for rendering an account of debts received by him, and for indemnity of persons entitled to the whole or any part of the monies received by virtue of such certificate, whose right to recover the same by regular suit against the holder of the Certificate is not affected by Act XX of 1841.(b)

Form of Engagement and Security Bond to be executed by Grantee.

122. The person to whom a Certificate has been granted should execute an Engagement and a Security Bond in the following form :

ENGAGEMENT.

Whereas a Certificate has been granted to me by the Judge of the Zillah of ——— under the provisions of Act XX of 1841 to collect the debts due to the Estate of the late C. D., I promise and engage to give acquittances for all sums of money collected by me as debts on account of the Estate of the late C. D. I further promise and engage to adhere strictly to such laws as have been or may be passed by the Governor General in Council for the guidance of persons holding Certificates for the collection of debts due to the Estates of deceased persons.

A. B.

(z) Sec. 2, Act XX., 1841.
C. O. 13th Nov. 1843. No. 87.
S. U. Pro. 13th Jan. 1851.

(a) Sec. 3, Act XX, 1841.
(b) Sec. 4, Ibid.

SECURITY BOND.

Whereas a Certificate has been granted to A. B. by the Judge of the Zillah of ———— under the provisions of Act XX of 1841 to collect the debts due to the Estate of the late C. D., I hereby engage and bind myself to stand Security for the said A. B. and to be answerable for any sums realized by him under the Certificate granted to him, which may legally be demandable from him under the provisions of Act XX of 1841. I further bind myself, my heirs and successors not to sell, give, or otherwise transfer or dispose of the property mentioned in the annexed Schedule, which I hereby pledge for the purpose of this engagement, until the conditions thereof have been completely fulfilled.

E. F.

Schedule of property to be entered here.(c)

How far decision of Judge is final.

123. The granting of such Certificate may be suspended by an appeal to the Court of Sudr Adawlut, which Court may declare the party to whom the certificate should be granted, or may direct such further proceedings for the investigation of the title as it may think fit. The Court may also, upon Petition, after a Certificate has been granted by the Zillah Judge, grant a fresh Certificate in supersession of the former one, and such fresh certificate will not affect any payments made to the person to whom any former Certificate may have been granted, without notice that the same has been superseded, but will entitle the person named therein to receive all monies that may have been recovered under the first Certificate from the person to whom it may have been granted.(d)

Local extent of power given by certificate.

124. Every Certificate gives authority to the person to whom it is granted, throughout the Presidency, and no Certificate subsequently granted in respect of the same property can be valid or effectual, except as hereinafter mentioned.(e)

Government Notes and Dividends.

125. A person certified as aforesaid, may be empowered to receive interest on Government notes and Dividends, or on shares of any Bank or parts thereof and to negotiate such securities. He may be also empowered to receive a share of such interest or dividends, or to negotiate a share of such securities. But these powers can only arise by express words in the Certificate.(f)

(c) C. O. 13th Nov. 1843, No. 87.
(d) Sec. 5, Act XX., 1841.
(e) Sec. 6, Ibid.
(f) Sec. 7, Ibid.

126. Where a Certificate may have been granted in cases in which it would be valid but for the previous grant of one, all payments made to the person holding the later Certificate, in ignorance of the grant of the previous one, must be held good against claims under such previous Certificate.(g)

Payments in cases where two certificates may have been granted.

127. With regard to the property of deceased Hindoos, Mahomedans, and other persons not usually designated by the term British subjects, no Certificate in respect of any such property can be valid, if made after a Probate or Letters of administration granted in respect of the same; provided assets belonging to the deceased were at the time of his death within the local jurisdiction of the Court granting the Probate or Letters of administration.(h)

Certificate after grant of Probate or Letters void.

Proviso.

128. Where a Certificate may have been granted in cases in which it would be valid but for a Probate, or Letters of administration previously granted, all payments made to the person holding the Certificate, in ignorance of the previous granting of the Probate or Letters of administration, must be held good against claims under the Probate or Letters of administration so previously granted.(i)

Bonâ fide payments protected.

129. No Probate or Letters of administration can be valid for the purpose of the recovery of debts, or for the security of debtors, after a Certificate granted in respect of the same property for which such Probate or Letters of administration may have been granted; provided assets belonging to the deceased were at the time of his death within the jurisdiction of the Court granting such Certificate.(j)

Probate or Letters after grant of certificate.

130. Where Probate or Letters of administration may have been granted, in cases in which such Probate or Letters of administration would be valid but for the previous grant of a Certificate, all payments made in ignorance of the previous grant of the Certificate, must be held good against claims under such previous Certificate.(k)

Bonâ fide payments protected.

131. Curators appointed under Act XIX of 1841 cannot exercise any powers which, but for that Act, would lawfully belong to such persons obtaining Certificates, Executors, or Ad-

Curators prohibited from exercising certain powers.

(g) Sec. 8, Act XX., 1841.
(h) Sec. 9, Ibid.
(i) Sec. 10, Ibid.
(j) Sec. 11, Ibid.
(k) Sec. 12, Ibid.

ministrators, where a Certificate, Probate, or Letters of administration have been actually obtained; but all persons who may have paid debts or rents to a Curator authorized by a Judge to receive the same must be indemnified, and the Curator be responsible for the payment of the same to the person who has obtained a Certificate, the Executor, or Administrator, as the case may be.(*l*)

132. A person succeeding to an Estate under a testamentary Deed is competent to recover debts and give discharges until his right of succession is contested, when all payments will be at the risk of the payer.(*m*)

133. Ascertained claims on an Estate may be liquidated from the assets, even though the title to such Estate may be at issue.(*n*)

134. The property belonging to a Tarwaad is answerable for debts contracted by the Karnaven, unless it can be clearly and satisfactorily proved that they were not contracted for the benefit of the Tarwaad.(*o*)

Zillah Judges may grant to a Trustee Certificate of administration of Estate so far as concerns Public Securities.

135. In the case of disputes among persons claiming to be jointly entitled to be Proprietors of any Public Securities of the E. I. Company, as the representatives of any deceased person, the Zillah Judge, whenever sufficient cause shall be shown to him, and on the request of any such claimant, may grant a Certificate of Administration of the personal Estate of the deceased, so far as concerns the said Securities according to Act XX., of 1841, to such person as may be from time to time appointed by the Government to act as Trustee.(*p*)

The Trustees may receive the interest of the Securities and pay the same to the persons named in the Certificate.

136 The Zillah Judge must specify in such Certificate the several persons appearing to him to be such Proprietors and their several shares; and the said Trustee, by virtue of such Certificate, is entitled to receive and give discharges for the interest accruing due on the Securities, accounting for and paying the sum to the several persons specified in the Certificate, according to the shares therein set forth. The Trustee is also empowered to act in all other respects concerning such Securities as Agent for such persons, and is entitled to the same rate of Commis-

(*l*) Sec. 13, Act XX., 1841.
(*m*) S. U. Pro. 24th April 1828.
(*n*) S. U. Dy. 13th July 1835.
(*o*) D. S. U. S. A. 38 of 1852.
(*p*) Sec. 1, Act X., 1851.

sion upon all such transactions as is allowed to the Government Agent for the time being on the like transactions as Agent of the public creditors of the E. I. Company, by any Regulations from time to time made by the Governor General of India in Council. But the right of any other person to recover the whole or any part of the monies so paid, by regular suit against all or any of the persons to whom the same may have been paid, is not affected by these provisions.(q)

If the disputes of the claimants be not ended within two years the Trustee may apportion the principal sum of the Securities rateably among the parties and apply for new Securities.

137. If any such dispute among persons claiming to be Proprietors of Public Securities of the E. I. Company, are not ended within two years from the date of the Certificate of the Administration granted by any Zillah Judge, the said Trustee may apportion the principal sum of the Securities rateably among the parties appearing from the Certificate to be proprietors thereof, and may apply for and receive new Securities from the proper Officer appointed to issue the same, in the names of the several parties certified to be entitled thereto. But such new Securities should be issued only according to the rules in use for the regulation and issue of Public Securities; and the receipt of the Trustee for new Securities by endorsement on the old ones or otherwise is a legal discharge to the E. I. Company against the disputing parties claiming to be entitled to the several amounts for which the Securities were issued. If, however, the amount of any Securities in dispute, or any part thereof, be not sufficient to admit of their rateable division, according to the rules applicable to the issue of such Securities, the Trustee may sell and dispose of the disputed Securities, or such part as may be necessary, and apportion the proceeds among the parties entitled to receive the same.(r)

Every such Certificate supersedes previous Certificate.

138. Every such Certificate granted to a Trustee supersedes and annuls any previous Certificate given of a half or any other share in the said personal Estate, so far as concerns the said Securities.(s)

Provision for the grant of Certificates as regards Residents in Foreign States or in Districts to which Act XX, 1841, does not extend.

139. As regards Residents in Foreign States out of the jurisdiction of British Courts of Justice, a Certificate of Administration to personal Estates granted by the British representative accredited to that State; or as regards the Residents in any Districts to which Act XX of 1841 does not extend, such

(q) Sec. 1, Act X., 1851.
(r) Sec. 2, Ibid.
(s) Sec. 3, Ibid.

Certificate granted by the British Officer in that District holding the highest executive authority, has the same effect in respect to Public Securities of the E. I. Company, as a Certificate granted to a Native Subject of Her Majesty under the said Act as amended by the provisions of this and the four preceding paras.(t)

Under what circumstances and conditions hidden treasure becomes the property of the finder.

140. Whenever any hidden treasure, consisting of gold or silver coin, or bullion, or precious stones, or other valuable property, may be found buried in the earth, or otherwise concealed within any part of the Territories subject to the Presidency, and, after due notification, the owner thereof may not be discoverable, such hidden treasure becomes the property of the person or persons who found the same, provided it does not exceed in amount or value the sum of one lac of Madras Rupees, and provided the finder or finders conform to the following rules. (u)

How the finder should proceed on the discovery of treasure.

141. Whenever any person may find hidden treasure of the above description, he should give immediate notice thereof to the Subordinate Judge or Principal Sudr Ameen, within whose jurisdiction the treasure may have been found, and should at the same time deposit the treasure in the Court, with an exact inventory thereof.(v)

Notification to be issued, and period allowed to claimants to present their claims.

142. The Subordinate Judge or Principal Sudr Ameen receiving a deposit as above directed, should return a receipt for the treasure deposited, after causing the same to be carefully compared with the inventory, and should issue a Public Notification in the current languages of the country, to be published and affixed in his own Court House, and in the Cutcherry of the Collector of the District, requiring all persons who may have any claim of right to the said treasure, to attend in person, or by Vakeel, and prove their title thereto, within six months from the date of the Notice.(w)

Claims of Government to be brought forward by Collectors.

143. It is the duty of the Collectors of land revenue acting under the instructions of the Board of Revenue, to bring forward and to support, in conformity with the foregoing provisions, any claim of right which Government may appear to

(t) Sec. 4, Act X., 1851.
(u) Sec. 2, Reg. XI., 1832.
(v) Sec. 3, Ibid. Act XII., 1838.
(w) Sec. 4, Reg. XI., 1832.

possess to such treasure. In the event of any claim of right being preferred, either on the part of individuals or of Government, pursuant to the above Notification, the Judge should institute a summary inquiry into the claim preferred; and if the title of Government, or other person so claiming the treasure in deposit or any part thereof be clearly established, he should adjudge the same accordingly, subject to reimbursement of all expense incurred by the finder of the treasure, as well as to such compensation for the discovery of it as may. in each case, appear just and reasonable.(x)

Summary inquiry to be instituted.

How judgment is to be given.

144. If no claim of right be preferred either by Government or by any individual within the period limited by the aforesaid Notification, or if the claim or claims so preferred do not, on a summary inquiry, appear to be well founded, and the amount or value of the hidden treasure found at the same time or in the same place, do not exceed one lac of Madras Rupees, the Subordinate Judge or Principal Sudr Ameen should adjudge the same to the person or persons who discovered the treasure and deposited it in Court, subject only to the actual expense incurred in adopting the measures above mentioned.(y)

What judgment should be given when no claim is preferred, and the amount does not exceed one lac of Rupees;

145. If the amount or value of any hidden treasure found at the same time, or in the same place, exceed one lac of Madras Rupees, and no claim of right thereto be established, judgment should be given, according to the preceding para, in favor of the person or persons who may have discovered and deposited the treasure, to the amount of one lac of Madras Rupees, and the excess above that sum should be declared at the disposal of Government.(z)

and when the amount exceeds that sum and no claim is established.

146. If any person discovering hidden treasure of the description specified in para 140 do not, within one month after finding the same, give notice to the Subordinate Judge or Principal Sudr Ameen, in conformity with para 141, and make the deposit therein mentioned, he forfeits all right and title to the treasure, as well as all claim to a reimbursement of expense, compensation, or reward; and the treasure so clandestinely withheld from public investigation is, on a summary suit by any subsequent claimant of right, and proof of a just title thereto, to

When persons discovering treasure forfeit all title to the treasure and to compensation.

Disposal of such treasure.

(x) Sec. 5, Reg. XI., 1832.
(y) Sec. 6, Ibid.
(z) Sec. 7, Ibid.

be adjudged to the legal owner, with interest and costs; or if no private claim be established, is liable to confiscation to Government, on the application of the Vakeel of Government, under instructions from the Board of Revenue.(*a*)

147. A summary appeal is preferrible from the decisions of the Courts in matters of Treasure Trove. (*Vide page* 26.)

(*a*) Sec. 8, Reg. XI., 1832.

EVIDENCE.

1. In receiving and appreciating evidence, the Mofussil Courts should adhere, as far as practicable, to the principles of the English Law of Evidence.(*b*)

English law to be observed.

2. Evidence may be either documentary or oral.

3. A Judge should not be influenced in his decision by a fact coming within his own personal knowledge: so far from being so influenced he is bound to decide in the most direct opposition to his most certain private knowledge, if the evidence so require, until that private knowledge is brought, if it can be brought, in the shape of *evidence* before the Court.(*c*)

Judge cannot decide on personal knowledge, but only on evidence.

4. Evidence for the Defence is not to be entered on until that for the Plaintiff is closed.(*d*)

Plaintiff's evidence to be first taken.

5. The Court should fix a day for the production of the evidence on either side. This should be done at the close of the proceedings on the day that the "Points" are recorded for proof by the parties, and the same should be notified at once to the parties then present and entered on a paper to be affixed in the Court House. Care should be taken, in deciding upon the said day, to ascertain from the parties, supposing them to be present, that there is no impediment to the production of their Exhibits (written evidence) and Lists of Witnesses on such day, and not less than eight days' time should be given for this purpose unless otherwise agreed on.(*e*)

Time for producing evidence.

6. If either party fail to produce his exhibits and lists of witnesses within the appointed day, and do not satisfactorily account for the default, he should be subjected to a fine not exceeding one-fourth the amount of stamp duty paid on the institution of the suit, and a second day should be fixed for the purpose. Should the party incur a further delay, the same fine may be repeated, or (preferably) the suit, if the failure be on the Plaintiff's side, should be struck off after a lapse of six

Penalty for default.

(*b*) S. U. Dy. 21st February 1828.
(*c*) S. U. Pro. 11th October 1827.
(*d*) S. U. Pro. 26th Sept. 1807.
(*e*) R. P. S. U. Cl. 91.

weeks from the period of the first default, or, if on the Defendant's side, the suit should be tried ex parte.(f)

Exhibits not to be filed without application.

7. No Exhibit should be filed by a Court of higher jurisdiction than a District Moonsiff's without a written application on stamped paper from the party desiring to file the same.(g)

Evidence to be restricted to recorded points.

8. No documentary evidence is to be received but such as may be relevant to some point in dispute, as recorded by the Court for establishment.(h)

Document referred to in Pleading to be filed with Pleading.

9. But if a party refer in any Plaint, Answer or other Pleading to any document in his possession or power, not being a shop-book or book of account, as a material proof or document in support of his claim or defence, he should file such document with such Pleading, and no such Pleading can be received without such document, unless, upon good and sufficient cause shown, the Court excuse its non-production or enlarge the time for producing it; and any adverse party is entitled, by himself or his Pleader, to inspect and take a copy of the document.(i)

Exhibit to be examined by Judge himself.

10. Exhibits should not be referred to the Sheristadar or other Officer of the Court to examine and report whether they are in accordance with the points given for proof. It is the duty of the Judge trying the case to examine the exhibits, and satisfy himself whether they are, or are not, in accordance with the points, and material to the issue of the case.(j)

Vakeels should examine Exhibits previous to filing.

11. In order to avoid the expense, trouble and inconvenience of filing irrelevant Exhibits, Vakeels should examine the documents which their clients may propose to exhibit in proof of their claim, previously to their being filed in Court.(k)

Exhibits to be produced in open Court.

If disputed, to be proved by witnesses.

12. Every Exhibit (excepting Exhibits that may be proved by absent witnesses) should be produced in open Court at the trial; and, if disputed, should be fully proved by the examination of witnesses upon solemn affirmation, whose depositions should be reduced into writing and signed.(l)

Exhibits to be marked and numbered.

13. Every Exhibit should be marked with some letter or number to identify it, and such letter or number should be distinctly referred to in those parts of the depositions of the

(f) R. P. S. U. Cl. 22.
(g) Cl. 1, Sec. 16, Reg. XIII., 1816. Cl. 2, Sec. 35, Reg. VI., 1816.
(h) R. P. S. U. Cl. 23.
(i) Sec. 17, Act X, 1855.
(j) C. O. 28th June 1828, B.
(k) Cl. 2, Sec. 9, Reg. XIV., 1816.
(l) Sec. 7, Reg. III., 1802, para 1.

witnesses, or of the proceedings, or of the Decree which may allude to the Exhibit.(*m*)

14. All Exhibits proved by witnesses not present in Court should, in the same manner, be marked and referred to and should be endorsed and minuted as having been read at the time they may have been read in Court.(*n*)

15. Exhibits should be marked and endorsed as follows: Mode of marking and endorsing.

PLAINTIFF'S EXHIBITS.

The No. of the paper on the Record.

A. (47) Bond for Rupees 100, executed by Defendant to Plaintiff, on the 13th May 1850.

The No. of the paper on the Record.

B. (48) Letter written by Defendant to Plaintiff, promising to pay the debt, dated 4th July 1850.

DEFENDANT'S EXHIBITS.

I. (60) Letter written by Plaintiff to Defendant, acknowledging the receipt of Rupees 20, dated 16th September 1850.

II. (61) Do.—— do.— acknowledging the receipt of Rupees 20, dated 4th October 1850.

III. (62) Receipt in full granted by Plaintiff, dated 20th November 1850.(*o*)

16. If an Exhibit be tendered to a Court in a cause depending before it, and the Judge reject the same, the following endorsement should be made upon it: Endorsement on rejected Exhibits.

——— Court.
Suit No. —— of———
——————Plaintiff versus——————Defendant.
Exhibit on the part of (P. or D.)
"Rejected" for the following reason :—
(Here enter the reason or reasons)
Returned in Court this——day of——A. D.——

——————
Judge.(*p*)

(*m*) Sec. 7, Reg. III., 1802, para 3.
Cl. 3, Sec. 35, Reg. VI, 1816.
Sec. 15, Reg. VII., 1816.
D. S. U. S. A. 11, 1851.

(*n*) Sec. 7, Reg. III., 1802, para 3.
(*o*) C. O. 22d January 1852. No. 124.
(*p*) Sec. 7, Reg. III., 1802, para 6.
C. O. 3d April 1815.

Acts and Regulations of Government, and public Acts of Parliament.

17. All Courts of Justice, and all persons having by law, or by consent of the parties, authority to take evidence should take judicial notice of all Acts, Regulations and Ordinances made by the Government of India, or by the Governments of Madras and Bombay respectively; as well as of all public Acts of Parliament.(*q*)

Primâ facie proof of a private Act of Parliament.

18. The Courts and persons aforesaid should admit as *primâ facie* evidence of any private Act of Parliament, any copy thereof purporting to be printed by the King's Printer.(*r*)

Judicial notice to be taken of the Court Officers &c,

19. Every Court should take judicial notice of its own Members and Officers respectively, and of their Deputies and Subordinate Officers or Assistants, and also of all Officers acting in execution of its process, and of all Advocates, Attorneys, Proctors, Vakeels, Pleaders and other persons authorized by law to act before it.(*s*)

of the names, titles &c. of certain persons,

20. All Courts and persons aforesaid should take judicial notice of the names, titles and authorities of the persons filling for the time being any one of the following offices:—Governor General, Governor, Lieutenant Governor or Deputy Governor, Secretary or Under Secretary to Government, Commander in Chief, Bishop, Member of Council, Legislative Councillor, Judge of any of Her Majesty's Courts, or of any Sudr Court, or of any Court of Judicature constituted in the territories of the E. I. Company, to or in which the powers of any of Her Majesty's Supreme Courts may be transferred or vested.(*t*)

and of divisions of time, place, &c.

21. All such Courts and persons aforesaid should take judicial notice of all divisions of time, of the geographical divisions of the world, of the territories under the dominion of the British Crown, of the commencement, continuation and termination of hostilities between the British Crown and any other State, and also of the existence, title, and national flag of every Sovereign or State recognized by the British Crown. In all the above cases, such Court or person may resort for its aid to appropriate Books or documents of reference.(*u*)

Proof of *Government Gazette.*

22. Any *Government Gazette* of any Country, Colony or Dependency under the dominion of the British Crown, may be proved by the bare production thereof before any of the Courts or persons aforesaid.(*v*)

(*q*) Sec. 2 and 3, Act II., 1855.
(*r*) Sec. 3, Ibid.
(*s*) Sec. 4, Ibid.
(*t*) Sec. 5, Ibid.
(*u*) Sec. 6, Ibid,
(*v*) Sec. 7, Ibid.

23. All Proclamations, Acts of State, whether Legislative or Executive, nominations, appointments, and other official communications of the Government appearing in any such *Gazette*, may be proved by the production of such *Gazette*, and constitute *primâ facie* proof of any fact of a public nature which they were intended to notify.(*w*)

Proof of Proclamations, Acts of State, &c.

When they are *primâ facie* proof of fact.

24. Any recital contained in any Act of the Governor General of India in Council, constituted for the purpose of making Laws and Regulations hereafter to be passed, of any fact of a public nature, must be deemed, before all such Courts and persons, to be *prima facie* evidence of the truth of the fact recited.(*x*)

Recital in Act of a public fact to be *primâ facie* proof.

25. The *Gazette* or Newspaper containing any advertisement purporting to be published by virtue of any public Statute, Act, Regulation or Ordinance, or of any Rule or Order of a Court of Justice, or of any Board or Officer of Revenue, may be received by any such Courts or persons aforesaid as *primâ facie* evidence that such advertisement was published duly under the authority from which it purports to proceed.(*y*)

Gazette &c. containing advertisement published by authority, to be *primâ facie* evidence of such authority.

26. All Courts and persons aforesaid may, on matters of public History, Literature, Science or Art, refer, for the purposes of evidence, to such published Books, Maps or Charts, as they may consider to be of authority on the subject to which they relate.(*z*)

Books, Maps, &c. to be evidence in matters of public History &c.

27. Books printed or published under the authority of the Government of a Foreign Country and purporting to contain the Statutes, Code, or other written Law of such country, and also printed and published Books of reports of decisions of the Courts of such country, and Books proved to be commonly admitted in such Courts as evidence of the Law of such country, are admissible before any such Courts or persons aforesaid as evidence of the Law of such Foreign Country.(*a*)

What Books &c. may be evidence of Foreign Law.

28. All maps made under the authority of Government or of any public municipal body, and not made for the purpose of any litigated question, should *prima facie* be deemed to be correct, and be admitted in evidence without further proof.(*b*)

When Government or public Maps are *primâ facie* proof.

(*w*) Sec. 8, Act II., 1855.
(*x*) Sec. 9, Ibid.
(*y*) Sec. 10, Ibid.
(*z*) Sec. 11, Ibid.
(*a*) Sec. 12, Ibid.
(*b*) Sec. 13, Ibid.

When attested document may be proved as if unattested.

29. An attested document may be proved as if unattested, unless it be a document to the validity of which attestation is requisite.(c)

Admissions.

30. The admission of a party to an attested instrument of its execution by himself is as against him sufficient *prima facie* proof of such execution of it, though it be an instrument required by law to be attested.(d)

31. Where a document has been once admitted before the Court by the party who executed it, a plea subsequently urged by the same party objecting to it cannot be received.(e)

32. The admission of a document, and of evidence in proof of that document being in the handwriting of a person deceased, as collateral proof, is not illegal, but is in accordance with the usage and practice of the Courts.(f)

33. The admission by the Defendant's witnesses of the execution by the Defendant to the Plaintiff of a Bond, *similar* in *amount* and *date* to the Bond sued under, was held to give to the evidence, independently of other considerations, a manifest preponderance in favor of the Plaintiff.(g)

34. A Deed, admitted as valid in a Decree which has become final, cannot be questioned in a subsequent suit.(h)

35. An admission by a party in a Razeenamah filed in a suit is good evidence to refute a plea subsequently advanced by him in another suit.(i)

Case in which a promise was held to be not binding.

36. In a case where A had promised to discharge the Bond of B executed to C., the Sudr Court held that the promise was not binding on A., inasmuch as there was no evidence to prove that he was justly responsible for the payment; for though A had agreed to discharge the amount, the promise was coupled with certain conditions with which C refused to comply, and the nature of which would seem to show that A, so far from agreeing to pay the money as a debt justly due by him, consented to pay it partly as a means of freeing himself from the importunities of C, and partly as the price of certain papers which,

(c) Sec. 37, Act II., 1855.
(d) Sec. 38, Ibid.
(e) D. S. U. S. A. 61 of 1854.
(f) Ibid, 83 of 1851.
(g) Ibid, 2 of 1824.
(h) Ibid, 26 of 1849.
(i) Ibid, 15 of 1849.

in a moment of confidence, he had entrusted to C, and which he was apprehensive C would use, or had used, to his prejudice.(j)

Compromise.

37. It is contrary to established rule to admit the offer of a compromise, made subsequent to the institution of suit, as evidence of admission; or to allow a compromise entered into by the brother of the Plaintiff without any legal authority from him.(k)

When handwriting of witnesses must be proved.

38. When the writer and subscribing witnesses of a Deed are dead, it is necessary that their handwriting be proved in order to the admission of the deed as evidence.(l)

When secondary evidence is admissible.

39. The contents of documents may be proved by secondary evidence, where the original writing is lost or destroyed. But before secondary evidence can be received, it must be proved that the original instrument was duly executed and that it was actually lost or destroyed.(m)

40. When an original document is out of the reach of the process of the Court, it is competent to the Court, on application to it, and on notice to the opposite party at a reasonable time before the hearing, to make an order for the reception of secondary evidence of its execution and contents.(n)

41. But evidence to the purport of a Deed is not admissible when the Deed itself can be produced.(o)

When production of documents may be looked upon with suspicion.

42. Where the Plaintiffs in an action in a Zillah Court alleged that they had lost the Deed under which they claimed, but on Appeal before the Sudr Court stated that they had recovered the same and prayed that it may be received in evidence with other documents, it was laid down as a general principle that, under any circumstances, the production of documents, at a time when the proceedings were nearly brought to a conclusion, and the weak parts of the case fully disclosed, must be looked upon with suspicion; and in the particular case before them, wherein the Plaintiff had failed to show any title to the property claimed, or to establish any circumstance from which such title might be inferred, the Court were of opinion that the admission of the documents in question, at such a period, would be unjustifiable.(p)

(j) D. S. U. S. A. 19 of 1814.
(k) Ibid, 11 of 1817.
64 of 1851.
(l) Ibid, 11 of 1821.
(m) Ibid, 12 of 1815.
(n) Sec. 36, Act. II, 1855.
(o) D. S. U. S. A. 19 of 1851.
(p) Ibid, 9 of 1811.

Copies of documents.

43. Although in the Law of evidence, it is a general rule that copies of papers authenticated by an authorized Officer are good evidence of the contents of the Originals, without any proof of their being examined copies, yet when such copies are from originals, in a language *foreign* to that of the authenticating authority, it is desirable that witnesses who had examined such copies with the originals should be heard in proof of their accuracy, particularly in cases where the opposite party may contest their correctness.(*q*)

44. It has been ruled that, when a copy of an instrument attested by a Collector and filed by a litigant party, may be disputed by the opposite party, evidence as to its genuineness must be taken by the Court.(*r*)

45. An impression of a document made by a copying machine may be taken without further proof, to be a correct copy.(*s*)

46. Mere copies of documents and unauthenticated documents coming from the hands of one of the litigant parties or his servants are inadmissible as evidence.(*t*)

47. A copy of a letter addressed by a party in a suit previous to the institution of such suit cannot be admitted as evidence for that party, and much less a *copy* of a *copy* of an instrument which the obligor may deny having executed.(*u*)

Possession of Bond by obligee is presumptive evidence in his favor.

48. The circumstance of Bonds being in the hands of the obligee must weigh strongly in favor of his claim for payment, while the allegation of the obligor of its being the practice to leave Bonds with creditors after payment, can weigh nothing on the other side.(*v*)

49. Where the Defendants in a suit put in and proved a Counter Deed, showing that the Bond sued under had been executed for the purpose of deceiving the Government, it was held that the Plaintiff was bound to prove that he had given a consideration for the said bond.(*w*)

50. A Decree having been passed by H. M's. Supreme Court against one of several representatives of the deceased obligor of

(*q*) D. S. U. S. A. 4 of 1823.
(*r*) Ibid, 61 of 1851.
(*s*) Sec. 35, Act II, 1855.
(*t*) D, S. U. S. A. 91 of 1851.
(*u*) Ibid, 7 of 1816.
(*v*) Ibid, 10 of 1821.
(*w*) Ibid, 20 of 1814.

a Bond, the validity of which Bond was disputed by certain of those representatives, and land in the Mofussil (in the joint possession of all the representatives) having been sold by the Sheriff, it was held that to enable the purchaser to obtain possession, by process of the local Courts, he must prove that all the representatives were equally with the one sued in the Supreme Court, liable under the Bond in question.(x)

51. The execution of a Deed of sale with fictitious consideration, in lieu of a Deed of gift, should not be allowed to vitiate the intention of the giver.(y)

52. The fact of a person being present when a Bill of Sale was executed by his father, and in no way objecting to the sale, was held to be sufficient evidence of his being a consenting party to such sale.(z)

53. To invalidate a Deed, it is sufficient to put in evidence the Decree of a competent Court declaring it to be a forgery.(a)

Acquittal of parties tried for forging a Deed does not necessarily make the Deed genuine.

54. Where parties tried for forgery had been acquitted, it was held that it did not necessarily follow from such acquittal that the Deed, with the forgery of which they were charged, was genuine. It might be a forgery, and the parties accused be nevertheless acquitted of the crime of forging it. But as it appeared, so far as the evidence taken on the trial was before the Court, that the Prosecutor had failed to prove the forgery, and that the further evidence subsequently produced in the Zillah Court upon this point was equally unsatisfactory, the Sudr Court decided that the Deed in question was a valid instrument.(b)

Blank Bonds.

55. Blank Bonds admitted by the obligor to have been signed and sealed by him, to be filled up by the obligee, are to be held as valid instruments.(c)

Transferred Bonds.

56. The transferree of a Bond must prove that he has a right to claim payment under it. It is not sufficient that he is merely the holder of it.(d)

(x) D. S. U. S. A. 8 of 1844.
(y) Ibid, 16 of 1853.
(z) Ibid, 14 of 1848, and 20 of 1849.
(a) Ibid, 5 of 1823.
(b) Ibid, 7 of 1811.
(c) Ibid, 16 of 1812.
(d) Ibid, 3 of 1816.

Bond by Minor.

57. A Minor, when he comes of age, is not responsible for a Bond executed by him during his minority.(e)

Debt on Bond.

58. A debt secured by a Bond takes its character from such Bond and looks no further back.(f)

Payments under Bond.

59. A party to exonerate himself from a claim grounded on a Bond, must shew full payment by good evidence.(g)

60. Notes requesting payment do not of themselves constitute proof of any payment having been made.(h)

61. It is equally a Law with the Hindoos as with other nations, that the formalities attending every contract should be observed throughout; and where a written Bond is entered into, written receipts for payments made should be taken, or endorsements registered on the Bond.(i)

Bond written in different hands and unattested.

62. A Bond written in two different hands, unattested by witnesses and not specifying the name of the writer, is invalid according to Hindoo Law.(j)

Bond executed under Power of attorney.

63. Where A had executed a Deed giving away a Meerassy, and A signed the Deed as "by consent of B," and it appeared by the decision of the Collector that such consent was not duly conveyed to A, the Power of Attorney transmitted by B to A being also declared by the Collector invalid; it was held that such decision, passed by a competent authority, was conclusive as to the inadmissibility of the document.(k)

Bond not witnessed, and neither writing nor consideration proved.

64. A Bond not witnessed and without proof of its being in the hand-writing of the alleged obligor, or of the sum mentioned therein being received by him, and its execution moreover denied by his heirs; was declared to be invalid.(l)

Comparison of disputed hand writing and seal.

65. An undisputed signature, writing or seal may be compared with a disputed one, though such signature, writing or seal be on an instrument which is not evidence in the cause before the Court.(m)

(e) D. S. U. S. A. 67 of 1847.
(f) Ibid, 2 of 1828.
(g) Ibid, 10 of 1821.
(h) Ibid, 20 of 1814.
(i) Ibid, 7 of 1821.
(j) Ibid, 11 of 1813.
(k) Ibid, 12 of 1814.
(l) Ibid, 11 of 1813.
(m) Sec. 48, Act II., 1855.

66. Where the seals affixed to two documents alleged to have been executed by the same party were different, it was held that it was incumbent on the person claiming under such instruments and producing them, to shew, by evidence, that the party who was alleged to have executed them was in the habit of using one or the other, or both, of the seals.(*n*)

Document obtained by compulsion.

67. A document to which the signature of a party was obtained by compulsion is not binding.(*o*)

Documents executed by Karnaven, binding on the family.

68. It has been ruled that the formal consent or signature of the other members of the family is not necessary to render a Bond or other document executed by the Karnaven valid, and binding on them, where the transaction was a *bonâ fide* one, and took place with their knowledge or consent, or was on their behoof.(*p*)

Deed executed by a Hindoo and one of his sons, binding on the other sons.

69. A Deed of sale of undivided property executed by one of the brothers of an undivided Hindoo family in conjunction with his father, without the consent of the other brothers who were minors at the time, can only hold against such minors, should the Deed have been executed because of family distress; but, if otherwise, it holds good against so much of the property as would have fallen to the share of the parties executing it, had a division taken place in the family.(*q*)

70. A Deed in which the obligor, a widow, covenanted that upon being placed in possession of a portion of what in fact was her own property, she would surrender the residue, was held to be invalid.(*r*)

71. A Deed executed concerning property under litigation at the date of its execution is not illegal.(*s*)

Proof necessary to recover Deposit.

72. Before a party can recover the value of a deposit illegally taken away, he must prove that the deposit was his property, or that he was responsible elsewhere for its value.(*t*)

73. Where jewels deposited for the general interests of a family may be proved to have been restored to the head of that family,

(*n*) D. S. U. S. A. 12, of 1817.
(*o*) Ibid, 7 of 1826.
(*p*) Ibid, 38 of 1852.
(*q*) Ibid, 33 of 1853.
(*r*) Ibid, 6 of 1831.
(*s*) Ibid, 5 of 1853.
(*t*) Ibid, 1 of 1817.

such restoration may be held to be a sufficient discharge of the deposit.(u)

Effect of registering Deed.

74. A registered Deed of sale or gift of real property, provided its authenticity be established to the satisfaction of the Court, invalidates any other Deed of sale or gift of the same property, which is not registered, whether such second or other Deed was executed prior, or subsequent to the registered Deed; —and a registered Deed of mortgage of real property, and Certificates of the discharge of such incumbrances, provided their authenticity be satisfactorily established, take priority of any other Deed of mortgage of the same property, which is not registered, whether such second or other Deed was executed prior or subsequent to the registered Deed; and notwithstanding any knowledge of such unregistered Deed or Certificate by any party to the registered Deed or Certificate.(v)

75. But the rule contained in the above para is not applicable to Deeds or Certificates made before the 1st of May 1843.(w)

What Deeds not void for want of registry.

76. And no conveyance or other instrument affecting title to land, or any interest in the same, whether made before or after the 1st of May 1843, other than the Deeds and Certificates abovementioned, is void for want of registration.(x)

77. It has been ruled that, under Act XIX of 1843, an unregistered Mortgage Deed is not invalidated by a Deed of sale of a subsequent date.(y)

Registry not necessary for purpose of evidence.

78. It is not absolutely necessary to register an Enam Sunnud in the Collector's Cutcherry. If it be produced in Court it is admissible as evidence, the registry being a question between the Grantee and the Government, with which the opposite litigant party has no concern.(z)

When Pymash accounts need not be filed.

79. Where the Defendants may admit the fact of the Plaintiff's name being registered in the Pymash accounts, the production of such Accounts by the Plaintiff will be unnecessary.(a)

When Letters are evidence;

80. Letters cannot be admitted as evidence to establish a fact, unless distinctly proved to have come out of the hands of the persons to whom they purport to be addressed.(b)

(u) D. S. U. S. A. 12 of 1834.
(v) Sec. 2, Act XIX, 1843.
(w) Sec. 2, Ibid.
(x) Sec. 3, Ibid.
(y) D. S. U. S. A. 30 of 1850.
(z) Ibid, 8 of 1816.
(a) Ibid, 37 of 1851.
(b) Ibid, 11 of 1824.

81. Private letters enclosed in envelopes, bearing post-marks, cannot be received in evidence ;(c) and letters not writtten by the parties are not admissible on the record.(d) when they are not evidence.

82. Where there is no formal separation of interest between several Hindoo brothers, and the parties have lived together as an undivided family till five years after the death of one of them, the presumption is that a trade carried on by the brothers was a joint and common concern.(e)

83. Where the fact of partnership was admitted by a litigant party, it was ruled that he and his heirs were jointly responsible for all liabilities of the partnership, and that it was not necessary, in order to establish that responsibility, to prove that goods made over to the joint firm were delivered to the said party, or that the account current furnished on such delivery, bore his separate signature.(f) Partnership.

84. In a suit for the recovery of the price of certain lace &c. furnished by the Plaintiff to the Defendant, it was ruled by the Sudr Court that the Plaintiff's Accounts should have been called for by the lower Court and examined ; as in transactions of this nature, a Merchant's Accounts, if satisfactorily proved, constituted sufficient documentary evidence to establish a claim for payment for goods delivered.(g) Merchants' Accounts.

85. Accounts supported by no evidence, require none to invalidate them.(h)

86. Where the rents of villages were at issue before a Court, it was held that it was the province of such Court, under the general rules prescribed in Section 10, Regulation XV of 1816, to instruct the litigants to require the Curnums of those villages to attend as witnesses, with their official accounts for the period in dispute, and in the event of their not being able to produce them, to account for such inability.(i) Revenue Accounts.

87. The evidence of parties, in whose presence the Accounts of the collections from a Mootah were signed and delivered by

(c) D. S. U. S. A. 15 of 1852.
(d) Ibid, 7 of 1819.
(e) Ibid, 3 of 1823.
(f) Ibid, 4 of 1844.
(g) Ibid, 9 of 1849.
(h) Ibid, 10 of 1821.
(i) Ibid, 6 of 1822.

the Curnums, is insufficient to prove such Accounts, which must be sworn to by the Curnums themselves.(*j*)

Accounts of a Zemindar.

88. To render the accounts of a Zemindar admissible as evidence of a claim against his Dewan, they should be proved by the Officer who drew them up, and be shown to have been prepared under the control and superintendence of the Dewan.(*k*)

When entry made against interest or in course of business is admissible in life-time of person making it.

89. Any entry or statement, which would be admitted in evidence after the death of the person who made it, on the ground of its having been made against the interest of such person or on the ground of its having been made in the ordinary course of business, is admissible before his death, if he be incapable of giving evidence by reason of his subsequent loss of understanding, or be at the time of the trial or hearing *bona fide* and permanently beyond the reach of the process of the Court, or cannot after diligent search be found.(*l*)

When entry made in course of business is admissible for purpose of identification.

90. Any entry in any books proved to have been regularly kept in the course of business or in any public office, so far as such entry merely refers to and tends to indentify by name, description, number or otherwise, any Bank Notes or other Securities for the payment of money, or other property, and the payer-in or receiver of them; is, in any case where such identification is necessary to be proved, admissible in evidence for that limited purpose, if it appear to have been made at or about the time of the transaction to which it relates, though the person who made it, or he on whose information it was made, is alive and capable of being produced as a witness.(*m*)

When Receipt is evidence against person other than giver.

91. Any receipt in writing, acknowledging the receipt of any money, valuable securities or goods, is, on proof of the execution thereof, admissible in evidence, not only against the party giving it but also against any person in whose favor such receipt would operate as a discharge, or to whom it would render the person giving it liable for the money, security or goods acknowledged to have been received.(*n*)

Receipt of Agent.

92. Whenever a receipt would be admissible under the preceding para if given by a Principal, a receipt given by an Agent

(*j*) D. S. U. S. A. 7 of 1819.
(*k*) Ibid, 9 of 1820.
(*l*) Sec. 39, Act II., 1855.
(*m*) Sec. 40, Ibid.
(*n*) Sec. 41, Ibid.

or servant of such Principal should in like manner be evidence upon proof of the authority to give such receipt.(o)

93. Books proved to have been regularly kept in the course of business or in any public office are admissible as corroborative, but not as independent proof of the facts stated therein. The following documents may also be admitted as corroborative evidence: certificates of shares, and of registration thereof, bills of lading, invoices, account sales, receipts usually given on the payment, deposit or delivery of money, goods, securities, or other things, provided they be proved to have been given in the ordinary course of business.(p)

What books and documents admissible as corroborative evidence.

94. Whenever it is proved that a Letter Book is kept, and that, according to the usual course of business, letters are copied into such book and despatched, and the Letter book is produced, and it is proved that the letter was despatched according to the usual practice, to the best of the knowledge and belief of the witness, having reasonable ground for forming that belief, the Court may presume the despatch of such letter according to the usual course of business.(q)

Proof of despatch of letter.

95. Any book proved to have been kept for marking the despatch and receipt of letters, containing an entry of the despatch of a letter and an acknowledgment of the receipt of such letter, is, on proof that such entry was made in the usual course of business, *primâ facie* evidence of the receipt of such letter.(r)

Primâ facie proof of receipt of letter.

96. Where dying declarations are evidence, they should be received if it be proved that the deceased was, at the time of making the declaration, and then thought himself to be, in danger of approaching death, though he entertained at the time of making it, hope of recovery.(s)

When dying declarations are admissible.

97. In cases of pedigree, the declarations of illegitimate members of the family, and also of persons who, though not related by blood or marriage to the family, were intimately acquainted with its members and state, are admissible in evidence after the death of the declarant, in the same manner and to the same extent as those of deceased members of the family.(t)

Declarations of illegitimate persons &c. admissible in questions of pedigree.

98. Wills left by Hindoos have no legal force whatever, except so far as their contents may be in conformity with the provisions of the Hindoo law, according to the authorities prevalent in the Provinces in which they were made.(u)

When Hindoo Wills are valid.

(o) Sec. 42, Act II, 1855.
(p) Sec. 43 and 44, Ibid.
(q) Sec. 50, Ibid.
(r) Sec. 51, Ibid.
(s) Sec. 29, Ibid.
(t) Sec. 47, Ibid.
(u) Sec. 4, Reg. V., 1829.

99. The provisions of the preceding para. being considered objectionable by the Hon'ble the Court of Directors, and the Sudr Court being called upon by the local Government to report whether or not Regulation V of 1829 should be revised in order that usage, the essential part of the Law, should carry with it authority superior to the rules of the Hindoo Law Books, the Sudr Court replied that it appeared to them the provisions of Section 16, Regulation III of 1802 bound the Courts to the rules contained in the books of Hindoo Law as strongly as do those of Section 4, Regulation V of 1829, but that the provisions of Clause 1, Section 16, Regulation III of 1802, had not in practice been allowed to give to those rules authority in contravention of local usage, even of established family usage, and that they (the Sudr Court) always respected local usage when pleaded and proved, dealing with it as "the essential part of the law." They therefore considered that, inasmuch as Clause 1, Section 16, Regulation III of 1802, had not been taken to allow the rules of the Hindoo Law Books to supersede local usage, so neither need Section 4, Regulation V of 1829 (preceding para.) be construed to invalidate Wills made by Hindoos in conformity with such usage in every instance in which they may not have been in conformity with the Hindoo law authorities prevalent in the Provinces in which they were made; and that consequently there was no occasion for revising the enactment in question.(*v*)

How they are to be construed.

100. In affixing a construction on a Will, the Courts are bound to respect the obvious intention of the Testator, as collected from the whole context of the Deed and according to the reasonable sense of the words employed.(*w*)

101. It has been held that if it be satisfactorily established that the wife and daughters of a deceased Hindoo consented to the execution of a Will assigning over his property to another, and that they aided in giving effect to the same, any objection made by them to the Will subsequently to the death of the Testator cannot be received.(*x*)

102. A testamentary writing can confer no right of succession, in opposition to established law or to the immemorial usage of the country or the family executing the instrument.(*y*)

(*v*) S. U. Pro. 10th Dec. 1832.
(*w*) D. S. U. S. A. 3 of 1824.
(*x*) Ibid, 25 of 1850.
(*y*) Ibid, 5 of 1825.

Proof of Power of Attorney.

103. Any Power of Attorney, which has been executed at a place distant more than 100 miles from the place wherein the suit is depending, may be proved by the production of it, without further proof, where it purports, on the face of it, to have been executed before and authenticated by a Notary, or any Court, Judge, Consul or Magistrate.(z)

104. If a custom appear doubtful it should be determined by evidence.(a)

105. It is usual to obtain a document from a person to whose care the temporary management of land may be entrusted when an emergency may render it necessary to resort to such agency.(b)

Proof of official documents.

106. Whenever by a Statute or Act, Regulation or Ordinance, any certificate, certified copy, or other documents shall be receivable in evidence in any Court of Justice, the same, if it be substantially in the form, and purport to be executed in the manner directed by the Statute, Act, Regulation or Ordinance which makes it evidence, shall be *primâ facie* evidence, where it is rendered admissible, without proof of any seal, stamp, signature, character or authority, which it is directed to have, or from which it is directed to proceed.(c)

Collectors may be summoned as witnesses and to produce documents.

107. Collectors and other Public Officers are, as other parties, liable to be summoned to appear as witnesses and bring with them documents in their custody which may be required by the Courts, under the penalty of Section 7, Regulation III., of 1802, (para 125) in the event of omission or refusal.

Oral testimony is for Court, not for suitors.

Mode of obtaining documents from Collectors.

108. The information of Witnesses is for the Court, not for the suitors. It is competent to a Court to call for all the evidence requisite for the due investigation of the cases before it; but the correct mode of obtaining the production of papers in the custody of a Collector or other public Officer is by summoning the Collector or other Officer to bring, or send by some proper person, the documents required. This course can produce no inconvenience, because, if the paper required be one of no particular moment, one of the Collector's Native Establishment would proceed with it and produce it; but if the paper which a party had requested the Court to call for, was such an one as

(z) Sec. 49, Act II, 1855.
(a) S. U. Pro. 16th March 1826.
(b) D. S. U. S. A. 6 of 1823.
(c) Sec. 56, Act II., of 1855.

ought not properly to be produced, or such as did not bear on the case, or on any other ground should not be put upon the record, the Collector would be able, either in person or by his Assistant, or a Native Officer, to state his objection to the Court, and the Court, by inspection of the document if necessary, or on consideration of the Collector's objection, would determine whether the paper in question should be admitted or rejected, and improper disclosures would then be prevented.(*d*)

Procedure, if Collectors refuse to furnish documents required by District Moonsiffs.

109. When the production of a public document may appear material to the issue of a suit pending before a District Moonsiff, and the Collector refuse to grant an authenticated copy to the party, the Zillah Judge, on the matter being reported to him, should exercise the power vested in him by Section 54, Regulation VI, of 1816, and call up the suit to his own Court.(*e*)

How copies of documents should be applied for.

110. Applications for copies of documents essential to the investigation of suits should, in the first instance, be preferred by the parties interested in their production, to the authority in whose records the original documents are deposited. Such applications should be supported by an authenticated Extract from the Proceedings of the Court before which the copies are required to be filed, showing that they are actually necessary for the purposes of a Judicial inquiry. In the event of their not being procured by these means; or if the *original* documents are required, the course laid down in para 108 should be adopted as a final measure.(*f*)

District Moonsiffs cannot furnish copies of Bonds, or substitute copies on record.

111. A District Moonsiff cannot grant copies of bonds or other documents as legal vouchers, nor of any papers which individuals may require for use or reference, or for the purpose of being substituted on the record for the originals. This can only be done by the Zillah Judge after he has received the record.(*g*)

Copies of documents not on stamped paper inadmissible as evidence.

112. Parties are not precluded from making, for their private use and at their own expense, copies of Judicial or Revenue papers, with the permission of the Court or Public Officer having charge thereof, on any paper which they may prefer; but copies not made on stamped paper of the prescribed rate, cannot be authenticated by any Court or Public Officer, or be

(*d*) C. O. 17th June 1824.
(*e*) S. U. Dy, 13th Dec. 1828.
Ibid, 12th November 1838.
(*f*) S. U. Pro. 7th March 1842.
(*g*) C. O. 30th May 1829.

received as evidence in any Court of Justice, or in any Public Office whatever.(*h*)

Restriction in furnishing copies to parties.

113. Copies of official documents not required to be granted under the Regulations, or to be produced in the Courts, or filed as evidence in any suit or miscellaneous matter, should not be furnished to any person without the sanction of Government; but when a Judicial Officer may, under this rule, refuse compliance with an application for copies of such documents, he should state in the order furnished to the applicant, whether any *other* objection exists to the copies applied for being furnished.(*i*)

Convicted persons not incompetent to testify.

114. No person is disqualified to be a witness in a suit, by reason of a conviction for any offence whatever.(*j*)

No incompetency from interest in suit.

115. No person is by reason of any interest in the result of any suit or of any interest connected therewith, or by reason of relationship to any of the parties thereto, incompetent to give evidence in such suit.(*k*)

A servant or porter may testify.

116. A servant who pays money on account of his master, or a porter who, in the way of his business, delivers out or receives parcels, is a good witness, although the evidence whereby he charges another with the money or goods, exonerates *him* from liability to account to his master for them.(*l*)

Husband or wife may give evidence.

117. A husband or wife is competent to give evidence for or against each other; but any communication made by husband or wife to the other during marriage is to be deemed a privileged communication, and is not to be disclosed without the consent of the person making the same, unless such communication relates to a matter in dispute in a suit pending between such husband and wife.(*m*)

Party to suit may be a witness.

118. Any party to a civil suit or other proceeding of a civil nature is competent and may be compelled to give evidence as a witness therein, either on his own behalf or on behalf of any other party to the suit or proceeding, and also to produce any document in his possession or power, in the same manner as if he were not a party to such suit or proceeding.(*n*)

(*h*) Sec. 30, Reg. XIII., 1816.
(*i*) C. O. 8th July, 1836.
C. O. 8th June 1838, B.
(*j*) Act XIX., 1837.
(*k*) Sec. 18, Act II., 1855.
(*l*) S. U. Pro. 21st Feb. 1828.
(*m*) Sec. 20, Act II., 1855.
(*n*) Sec. 19, Ibid.

Person present in Court may be examined as witness &c. though not summoned.

119. Any person present in Court, whether a party or not, may be called upon and compelled to give evidence, and produce any document then and there in his actual possession or in his power, in the same manner and subject to the same rules as if he had been summoned to attend and give evidence, or to produce such documents; and may be punished in like manner for any refusal to obey the order of the Court.(o)

When Legal Advisers may be examined.

120. A Barrister, Attorney, or Vakeel, must not, without the consent of his client, disclose any communication made by the client to him in the course of his professional employment, nor any advice given by him professionally to his client, nor the contents of any document of his client, the knowledge of which he may have acquired in the course of his professional employment. The privilege however is that of the client, and if any party to a suit give evidence therein at his own instance, he is to be deemed thereby to have waived his privilege and to have consented to the disclosure by such Barrister, Attorney, or Vakeel, of any matter as aforesaid, which may be relevant, and which the Barrister, Attorney, or Vakeel, would have been bound to disclose, but for the privilege of his client; and the Barrister, Attorney, or Vakeel, is bound, upon examination, to disclose any such matter.(p)

Persons incompetent to testify.

121. The only persons incompetent to be witnesses are children under seven years of age and persons of unsound mind, who appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly.(q)

Summons against witness.

122. To procure the attendance of witnesses, the Courts, on the requisition of the Plaintiff or Defendant, or their respective Vakeels, are to issue a summons to the witnesses whom the parties may name (provided they be not women, who, according to the custom of the country, ought not to be compelled to appear as witnesses in a Court of Justice) specifying the number of the suit on the file, at whose request the summons is issued, and the names and residence of the witnesses, and requiring them to appear in the Court on a day specified in the summons, and there to depose concerning the matter in dispute between the parties.(r)

(o) Sec. 25, Act II, 1855.
(p) Sec. 24, Ibid.
(q) Sec. 14, Ibid.
(r) Sec. 7, Reg. III., 1802, para 1.
Sec. 28, Reg. VI., 1816.

Application for summons.

123. A witness can be summoned by a Court of higher jurisdiction than a District Moonsiff's, only upon the written application, on stamped paper, of the party citing him.(s)

Insane person not to be summoned.

124. No person, who is known to be of unsound mind, can be summoned as a witness, without the consent previously obtained of the Court before which his attendance is required.(t)

Penalty for non-attendance by witness or refusal to testify.

125. If a witness who has been summoned do not attend on the day appointed, or attending refuse to give evidence or to subscribe his deposition as hereafter mentioned, the Court, if it be proved to its satisfaction that the witness was material to the cause, should issue an order to the Nazir to seize and bring the witness before the Court, and should impose on him a fine not exceeding 500 Rupees, and commit him to close custody until he consents to give his evidence and signs his deposition.(u)

Expenses of witnesses payable by party citing him.

126. If a witness incur any expense in consequence of his attendance in Court, the Court should award such sum for his charges as may appear to be reasonable, whether he be examined or not. If the sum so awarded be not paid immediately, or secured to the witness to the satisfaction of the Court, the party at whose requisition the witness may have been summoned is not only to lose the benefit of his testimony, but the Court, after the Decree in the cause has been passed, is to confine such party until he discharges the sum awarded to the witness.(v)

Special application to compel attendance of party to suit as witness.

127. If a party to a suit require the attendance of any other party thereto as a witness to be enforced, he must, by himself or his Pleader, make a special application to the Court for an order for a summons to compel the attendance of the party, and must show to the satisfaction of the Court sufficient grounds in support of such application; otherwise a summons cannot be issued. In cases in which, according to the practice of the Court, a day is fixed for the trial, the application must be made before such day is fixed.(w)

(s) Sec. 17, Reg. XIII., 1816.

(t) Cl. 2, Sec. 14, Act II., 1855.

(u) Sec. 7, Reg. III., 1802, para 1. Sec. 20, Reg. IV., 1802. Sec 4, Act XIX., 1855.

(v) Ibid.

(w) Sec. 2, Act X., 1855.

Notice to party to show cause why he should not so attend.

128. The Court, upon the application of the Pleader of any party to a suit whose attendance as witness is required, or without such application, if the Court think fit so to do, may, before making such order, cause notice to be given to the party or his Pleader, fixing a day for him to show cause why he should not attend and give evidence, and may also, from time to time, if necessary, for good and sufficient cause, enlarge the time for such purpose.(x)

Written declaration of party receivable.

129. In support of the cause shown, the Court should receive a declaration in writing of the party, if signed by him, and delivered into the Court by himself or his Pleader.(y)

Penalty for false statement.

130. If the party making the declaration wilfully and corruptly make a false statement therein, he is to be deemed guilty of perjury and is to be proceeded against, and, upon conviction, punished accordingly.(z)

When party to suit may not be summoned as witness.

131. The Court need not compel the attendance of any party to a suit for the purpose of giving evidence therein, if such party satisfy the Court that he has no personal knowledge of any material subject of enquiry in the suit, and that he cannot give material evidence therein.(a)

When summons should issue against party.

132. If no sufficient cause be shown on the day fixed, or upon any subsequent day to which the Court may enlarge the time for that purpose, the Court should issue a summons for compelling the party to attend and give evidence.(b)

Penalty for summons against party being disobeyed, or his refusing to testify &c.

133. If a witness being a party to a suit to whom a summons to give evidence or produce a document is personally delivered, fail, without lawful excuse, to comply with the summons, or attending, or being present in Court, refuse, without lawful excuse, to give evidence or to subscribe his deposition, or to produce any document in his custody or possession, the Court, instead of proceeding in the manner indicated in para 125 may, if the witness be a Plaintiff, Appellant, or Petitioner, dismiss the Plaint, Appeal, or Petition with costs against such party, or if such party be a Defendant or Respondent, may hear and decide the case against such Defendant or Respondent *ex parte*.

(x) Sec. 3, Act X, 1855.
(y) Cl. 1, Sec. 4, Ibid.
(z) Cl. 2, Sec. 4, Ibid.
(a) Sec. 5, Ibid.
(b) Sec. 6, Ibid.

If any such Plaint, Appeal or Petition be dismissed for such cause, the Plaintiff or Petitioner is debarred from preferring any other Petition, Appeal or Plaint in respect of the same matter.(c)

Persons not obeying summons &c, liable for damages in a civil action.

134. Any person whether a party to the suit or not, to whom a summons to attend and give evidence or produce a document is personally delivered, and who, without lawful excuse, neglects, or refuses to obey such summons, or who is proved to have absconded or kept out of the way to avoid being served with such summons, and any person who, being in Court and upon being required by the Court to give evidence or produce a document in his possession, refuses, without lawful excuse, to give evidence or sign his deposition, or to produce the required document, is, in addition to any proceeding to which he would otherwise be subject, liable to the party at whose request the summons was issued, or at whose instance he was required to give evidence or produce the document, for all damages he may sustain in consequence of such neglect, refusal, absconding or keeping out of the way, to be recovered in a civil action.(d)

Oaths to be administered to certain deponents;

135. The Courts are to administer to parties and witnesses consenting to be examined on oath, and to parties and witnesses not exempted from taking an oath under the provisions of the following para, such oaths as may be considered most binding on their consciences according to their respective religious persuasions.(e)

Solemn Affirmation to others.

136. Persons of the Hindoo or Mahomedan persuasion when called upon to bear evidence in the Courts, should instead of an oath, make affirmation to the following effect:—

"I solemnly affirm in the presence of Almighty God, that what I shall state shall be the truth, the whole truth, and nothing but the truth."(f)

Perjury.

Subornation of perjury.

137. If any person making such affirmation should wilfully and falsely give his evidence, he is subject to punishment for perjury; and any person causing or procuring another to commit

(c) Sec. 8, Ibid.
(d) Sec. 10, Ibid.
(e) Sec. 7, Reg. III, 1802, par. 1.
Sec. 20, Reg. IV, 1802.
(f) Sec. 1, Act V., 1840.

this offence, is liable to be punished for subornation of perjury.(g)

Who may testify on simple affirmation.

138. Any person who by reason of immature age or want of religious belief, or who by reason of defect of religious belief, the Court may consider ought not to be allowed to testify on oath or solemn affirmation, is to be admitted to give evidence on a simple affirmation, declaring that he will speak the truth, the whole truth, and nothing but the truth.(h)

139. The provisions contained in the preceding para are applicable to testimony given by affidavit or otherwise in writing, as well as to testimony orally delivered.(i)

How such persons are punishable for false testimony.

140. Any such witness wilfully giving false evidence is subject to be proceeded against in like manner, and to suffer, if convicted, the same punishment as if he had been sworn and had committed wilful and corrupt perjury. The indictment or charge should be varied so as to meet the case.(j)

How oral evidence is to be taken.

141. The deposition of every witness who may appear in Court, whether a party to the suit or not, should be taken orally in open Court, in the presence and hearing, and under the personal direction and superintendence of the Judge. The statements of the witnesses should be recorded in a brief form as a narrative, and not by question and answer, unless special cause for recording question and answer in any particular instance may appear, as when a witness is guilty of prevaricating; and when a question put to a witness may be objected to by either of the parties or their Vakeels, and the Court allows the same to be put, the question and the answer should be taken down, and the objection, the name of the party making it, and the decision of the Court thereon be also recorded. The deposition of a witness, when completed, should be read over to him, and signed by him in the presence of the Judge and of the parties to the suit or their Vakeels, or such of them as may attend. In case the witness may refuse to sign his deposition, the Judge should sign the same and record the reason, if any, given by the witness for such refusal, together with such remarks thereon as the Judge may think fit to make. The

(g) Sec. 2 and 3, Act V, 1840.
Sec. 14, Act. X., 1855.
(h) Sec. 15, Act II, 1855.
(i) Sec. 16, Ibid.
(j) Sec. 17, Ibid.

Judge should also record such remarks as he may think necessary respecting the demeanor of any witness whilst under examination.(*k*)

142. No party to a suit, appeal or proceeding, who offers himself as a witness therein, is, without the consent of all parties thereto, to be examined otherwise than in open Court, in such manner as the Court may direct, having regard to the usages and customs of the country, unless such examination is taken in accordance with the provisions of the above para.(*l*)

Examination of party to suit who offers himself as witness.

143. In suits before District Moonsiffs for other objects than for land and of a valuation not exceeding Rupees 20, and in cases tried by Village Moonsiffs, the depositions of the witnesses should not be taken down in writing, but brief notes of the statements of the witnesses should be made by the Moonsiff for his guidance in framing his Decree.(*m*)

In what cases depositions need not be taken in writing.

144. The evidence of witnesses must be restricted to the points recorded by the Court for proof.(*n*)

145. The Courts should direct their Vakeels to propose their questions to witnesses under examination, in such general terms as shall simply elicit the information which the witnesses may possess on the points at issue, and to avoid leading questions which may suggest a particular answer, or may have a direct tendency to such suggestion.(*o*)

Leading questions to be avoided.

146. A witness cannot be excused from answering any question relevant to the matter in issue, upon the ground that the answer will criminate, or may tend, directly or indirectly, to criminate him, or that it will expose, or tend directly or indirectly to expose him to a penalty or forfeiture of any kind. But no such answer which a witness may be compelled to give can, except for the purpose of punishing him for wilfully giving false evidence upon such examination, subject him to any arrest or prosecution, or be used as evidence against him in any criminal proceeding.(*p*)

Witness bound to answer criminating questions.

(*k*) Sec. 12 and 14, Act X., 1855. R. P. S. U. Cl. 39.

(*l*) Sec. 7, Act X., 1855.

(*m*) Sec. 12, Act X., 1855. R. P. S. U. Cl. 38.

(*n*) C. O. 25th March 1833. R. P. S. U. Cl. 23.

(*o*) C. O. 3d April, 1815. Cl. 2, Sec. 33, Reg. VI., 1816.

(*p*) Sec. 32, Act II., 1855.

He may be examined as to conviction for felony.

147. A witness may be questioned as to whether he has been convicted of any felony or misdemeanor, and, upon being so questioned, if he either deny the fact or refuse to answer, it is lawful for the opposite party to prove such conviction.(q)

Cross examination.

148. After a witness has been examined by the party who cited him, he may be cross-examined by the other side, after which the party who cited the witness should be allowed to re-examine him with respect to any statements made by him in his cross-examination; but not on any new matter.(r)

149. A witness may be cross-examined as to previous statements made by him in writing, or reduced into writing, relative to the subject matter of the cause, without such writing being shown to him; but if it is intended to contradict him by the writing, his attention must, before such contradictory proof can be given, be called to those parts of the writing which are to be used for the purpose of such contradiction. But the Judge may, at any time during the trial, require the production of the writing for his inspection, and make such use of it, for the purposes of the trial, as he may think fit.(s)

Refreshing memory of witness.

150. A witness should be allowed to refresh his memory by any writing made by himself or by any other person at the time when the fact occured, or immediately afterwards, or at any other time when the fact was fresh in his memory and he knew that the same was correctly stated in the writing. In such case, the writing should be produced and may be seen by the adverse party, who may, if he choose, cross-examine the witness upon it.(t)

151. Whenever a witness may refresh his memory by reference to any document he may, with the permission of the Court, refer to a copy of such document, provided the Court under the circumstances, be satisfied that there is sufficient reason for the non-production of the original.(u)

Former statement admissible to corroborate a witness.

152. In order to corroborate the testimony of a witness, any former statement made by him relating to the same fact, at or about the time it took place, or before any authority competent

(q) Sec. 33, Act II, 1855.
(r) R. P. S. U. Cl. 37.
(s) Sec. 34, Act II, 1855.
(t) Sec. 45, Ibid.
(u) Sec. 46, Ibid.

to investigate it, is admissible, and for that purpose a certified copy of a deposition or statement taken before any Court, Judge, Justice of the Peace, Magistrate, or person lawfully exercising the power of a Magistrate, or before a Commissioner or Superintendent for the suppression of Thuggee or Dacoity in the discharge of his duty, is, without further proof, to be received as *primâ facie* evidence that such deposition or statement was made, and that it was made at the time and place, and under the circumstances if any, stated in the certificate or on the face of the deposition or statement.(*v*)

Person summoned to produce document need not attend personally.

153. Any person, whether a party to the suit or not, may be summoned to produce a document without being summoned to give evidence; and any person summoned merely to produce a document must be deemed to have complied with the summons, if he cause such document to be produced, instead of attending personally to produce the same.(*w*)

But witness so summoned must bring it, or cause it to be brought in Court.

154. But every witness summoned to produce a document is, if the same be in his custody, possession or power, bound to bring it, or cause it to be brought into Court, although there be a valid objection to the right of the party calling for it to compel its production, or to the reading or putting it in as evidence, or to the disclosure of the contents thereof. The validity of any such objection made by the party producing the document should be determined by the Court, and for the better determination thereof, the Court may receive admissible evidence which the said party may produce, and except in the case of any document relating to affairs of State, the Court may inspect the document, and, if necessary, call to its assistance any person whom it may appoint to interpret the same. Such person however should be previously sworn truly to interpret the same to the Court alone, and not to disclose the contents thereof, except to the Court, unless the Court should order the document to be given in evidence.(*x*)

Mode of determining objection to production.

Party to suit not bound to produce certain documents; unless he offers himself as witness.

155. A witness being a party to the suit is not bound to produce any document in his possession or power which is not relevant or material to the case of the party requiring its production, nor any confidential writing or correspondence which may

(*v*) Sec. 31, Act II, 1855.
(*w*) Sec. 26, Ibid.
(*x*) Sec. 23, Ibid.

have passed between him and any legal professional adviser. If any party however offer himself as a witness, he is bound to produce any such writing or correspondence in his custody, possession or power, if relevant or material to the case of the party requiring its production.(y)

Witness &c. not bound to produce State documents.

156. A witness, whether a party or not, is not bound to produce any document relating to affairs of State, the production of which would be contrary to good policy, nor any document held by him for any other person who would not be bound to produce it if in his own possession.(z)

In what case witness is bound to produce his title deeds.

157. A witness not a party is not bound to produce his own title deeds, unless he has agreed in writing with the party requiring their production, or with some person through whom he claims to produce them.(a)

Evidence of Purdah Nusheen women.

158. In cases where the evidence is needed of females, who, according to the custom of the country, ought not to be compelled to appear as witnesses in a Court of Justice, and where the Court may be of opinion that the ends of justice require it, the Court may issue a Commission to any of its Officers or other person, to be named in the Commission, for the examination of such females in the hearing of the parties to the suit or their Pleaders, in such manner as the Court may direct, having regard to the custom and usage of the country, and with liberty to the parties or their Pleaders to cross-examine, notwithstanding any thing to the contrary in Section 5, Act VII of 1841.(b)

Zemindars &c. not to be ordinarily summoned.

159. The Court should as much as possible avoid summoning Zemindars and other individuals of rank and respectability as witnesses in Civil suits or proceedings; and, when their attendance in Court may be indispensable, they should be treated with the consideration and attention due to their rank and station in life.(c)

Evidence of Revenue Officers above the rank of Peon;

160. Whenever the evidence of any native Revenue Officer above the rank of Peon may be required by a litigant party, the Judge should satisfy himself that the fact to be established by such Officer's testimony is material, and that sufficient evidence

(y) Sec. 22, Act II, 1855.
(z) Sec. 21, Ibid.
(a) Sec. 9, Act X., 1855.
(b) Sec. 13, Ibid.
(c) C. O. 9th October 1835, No. 18.
25th August 1823.
1st March 1827.

thereto is not attainable without his appearance. When these two points may be determined in the affirmative, a communication should be addressed by the Judge to the Collector apprizing him of the necessity existing for the attendance of the Officer in question, and requesting him to state whether the Public Service would be impeded by his appearance on the day which the Court may propose for his examination, and if so, to state when he could attend without material inconvenience. An immediate answer should be given by the Collector; and unless special circumstances should require the attendance of the Revenue Officer at a period other than that designated by the Collector, the summons for his attendance should issue in conformity with the Collector's suggestion.(*d*) This rule applies only to servants of the Hoozoor and Talook establishments, but not to Village Moonsiffs, Natamgars, Curnums, or other inferior village authorities.(*e*)

161. The attendance before District Moonsiffs of native Revenue Officers of the above description for the purpose of giving evidence, must be obtained from the Collector through the medium of the Zillah Judge.

162. Whenever the attendance of any servants on the establishment of a District Moonsiff may be required by a Head of Police, the latter Officer should apply to the District Moonsiff.(*f*)

and of employés in District Moonsiffs' Courts.

163. A party cannot be allowed to plead as an excuse for neglecting to file his evidence, that the Court did not specially call for it, provided the Court had fixed the issues under which the evidence might with propriety have been tendered.(*g*)

Plea for not filing evidence.

164. The Court of original trial should not dispense with the examination of any witnesses cited by a party, but should examine all those produced to prove each point recorded for establishment, as it is not for such Court to determine with any thing approaching to certainty, as to whether or not the Court of Appeal may deem essential, evidence which, to the lower Court, may appear superfluous. There is also the further ground for adopting this course that the rejecting of evidence tendered,

Court cannot dispense with examination of any witness.

(*d*) C. O. 25th August 1823.
(*e*) S. U. Dy. 16th October 1828.
(*f*) S. W. Pro. 11th March 1854.
(*g*) D. S. U. S. A. 28 of 1850.

by being made a ground of appeal, counteracts the expeditious disposal of suits.(*h*)

Evidence of one witness sufficient proof.

165. The direct evidence of one witness, who is entitled to credit, is sufficient for proof of any fact in any Court, or before any authority competent to take evidence.(*i*)

Evidence not vitiated because of witness having deposed in another suit.

166. The mere fact of a party's witness having deposed in his favor in one suit does not vitiate his evidence in favor of the same party in any subsequent suit.(*j*)

Further evidence in Appeal not ordinarily admissible.

167. The Court of original jurisdiction is the Court in which the defence is to be made, and a party in a Court of Appeal cannot claim the admission of further evidence, whether documentary or parol, except upon the clearest proof of his inability to produce it in the Court below, or otherwise the Court of Appeal would be liable to admit evidence fabricated for the express purpose of meeting the Decree appealed from.(*k*)

168. A fact brought forward for the first time in the Petition of Appeal, and of which the Appellants must have been previously aware, was held to be inadmissible as evidence, as it was incumbent on them to have brought the fact in issue in the lower Court.(*l*)

169. Copies of depositions taken at the original hearing of a suit, the whole of the proceedings in which were quashed, are inadmissible as evidence, on a retrial of the same suit; unless upon proof of the death of the witness from whom such depositions were received.(*m*)

No new trial for rejection or improper reception of evidence.

170. The improper admission or rejection of evidence is not ground of itself for a new trial or reversal of any decision in any case, if it appear to the Court before which such objection is raised that independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision.(*n*)

(*h*) C. O. 25th March 1833.
(*i*) Sec. 28, Act II., 1855.
(*j*) S. U. Pro. 5th March 1849.
(*k*) D. S. U. S. A. 16 of 1812, and 3 of 1817.
(*l*) Ibid, 5 of 1817.
(*m*) Ibid, 11 of 1817.
(*n*) R. P. S. U. Cl. 62.

171. The mode in which the evidence of absent witnesses is to be obtained is laid down by Act VII of 1841, the provisions of which are hereunder given;

Evidence of absent witness.

(II.) It shall be lawful for any Court within the territories of the Government of the East India Company, and the several Judges thereof, in every civil proceeding depending in such Court, upon the application of any of the parties to such proceeding, to order the examination upon interrogatories or otherwise, before any Officer of such Court, or other person or persons named in such order, of any witnesses within the jurisdiction of the Court where the proceeding shall be depending, or to order a Commission to issue to any subordinate Court for the examination of such witnesses upon interrogatories or otherwise, or to order a Commission to issue to any other Court for the examination of witnesses at any place or places out of such jurisdiction upon interrogatories or otherwise, and by the same or any subsequent order or orders to give all such directions for taking such examinations as well within the jurisdiction of the Court wherein the proceeding shall be depending as without, as may appear reasonable and just. Provided always, that any Court to whom any such Commission shall be directed, shall take the examination in open Court in all cases where witnesses are able to attend in Court and are not exempted from attendance by law, absolutely, or at the discretion of the Court. Provided also that such Commissions as aforesaid for the examination of witnesses out of such jurisdiction may be directed otherwise than to some Court under special circumstances which may appear to the Court issuing the Commission to render such special direction expedient. Provided also that all Commissions issued, and orders made by any Court of the East India Campany, and which are required to be executed within the local limits of any of Her Majesty's Supreme Courts, shall be directed in manner hereinafter mentioned.

Courts may order examination on Interrogatories;

and may issue Commissions to other Courts.

Provisoes.

(III.) When any order shall be made for the examination of witnesses within the jurisdiction of the Court wherein any such proceeding as aforesaid shall be depending, by the authority of this Act, it shall be lawful for the Court or any Judge thereof, in and by the first order to be made in the matter, or any subsequent order, to command the attendance of any person to be named in such order, and to direct the attendance of any

Witness within a Court's jurisdiction may be ordered to attend and produce documents.

such person to be at his own place of residence, or elsewhere, if necessary or convenient so to do, and to produce all necessary documents and papers. And the wilful disobedience to any such order shall be deemed a contempt of Court, and punishable as in other cases of refusing or neglecting to give testimony. Provided always that every person whose attendance shall be required under this Act shall be entitled to the like payment for expenses and loss of time, as upon attendance in Court in cases where such expenses are now allowed.

Punishment for contempt.

Expenses of witness.

Power of Commissioners to administer oaths and affirmations.

(IV.) It shall be lawful for every Court or person authorized to take the examination of witnesses by any order or commission issued in pursuance of this Act, and they are hereby authorized and required, to take all such examinations upon oath, or affirmation where an affirmation is admissible or required upon a trial, and if upon such oath or affirmation, any person making the same shall wilfully and corruptly give any false evidence, every person so offending shall be deemed and taken to be guilty of perjury, and every person causing or procuring another person to commit the offence of perjury hereby defined shall be guilty of subornation of perjury.

Inquiry before issuing Commission.

(V.) Before any order or commission for the examination of any witness under this Act shall be issued, the Court or Judge issuing the same shall be satisfied that there is good reason for believing that the witness will be unable to attend at the usual time for examination, by reason of absence from the jurisdiction, sickness, or other cause allowed by law. And before granting any such Commission, the Court granting the same shall make particular inquiry as to the present residence of the witness whose deposition is to be taken under such Commission, and as to the Court of the same degree as the Court granting such Commission, or of inferior degree to such Court, which may be nearest to the place of residence of the witness, and the Commission shall ordinarily be directed to such Court of equal or inferior degree as may most conveniently execute the same. Provided however that, if there be doubt as to which is the most convenient Court of equal or inferior jurisdiction, such Commission may be directed to the Judge having jurisdiction within the District within which the Commission is to be executed. And the Judge shall at his discretion execute the Commission in his own Court, or direct it to any subordinate Court within his District, which shall have the same effect for all the purposes

Judge to whom Commission is directed, may authorize subordinate authority to execute it.

of this Act, as if the Commission had in the first instance been directed to such subordinate Court. And no deposition taken under this Act, except as hereinafter mentioned, shall be read in evidence without the consent of the party against whom the same may be offered, unless it be proved that the deponent is beyond the jurisdiction of the Court, or dead, or unable from sickness, or infirmity, to attend to be personally examined, or distant without collusion more than 50 coss from the place where the Court is held, or exempted by law, absolutely, or at the discretion of the Court, from personal appearance in Court, or unless the Court shall at its discretion dispense with the proof of any of the above circumstances, or shall authorize the deposition of any witness being read in evidence notwithstanding proof that the causes for taking such deposition have ceased at the time of reading the same; and after the witness shall be produced, and shall have delivered his testimony, it shall be lawful for the Court at its discretion to authorize the reading of the deposition. And all depositions taken under this Act, being duly certified, may be read, at the discretion of the Court, without proof of the signature to such certificate.

Commissions may be directed to Courts of Requests.

(VI.) Any Court other than one of Her Majesty's Courts, or any Judge thereof, may issue such Commissions as aforesaid, and such orders as are indicated in the second and third Sections of this Act to be executed within the local limits of the jurisdiction of any of Her Majesty's Courts; and all such Commissions and orders, except when directed otherwise than to a Court, shall be directed to a Court of Requests having jurisdiction within such limits, or any part thereof.

Commissions may be executed in allied Native Territories.

(VII.) Such Commissions and orders as aforesaid may be issued for execution under this Act within the territories of Princes and States in alliance with the East India Company; and all persons within such last mentioned territories being in the service of the East India Company are hereby required to pay obedience thereto, and for disobedience thereof shall, on being found within the jurisdiction of the Court or Judge issuing any such Commission or order, be punishable in like manner, as if such offence had been committed within such jurisdiction; and for giving false testimony under the same shall be punishable by any Court of Justice within the territories of the East India Company.

Court executing Commission may punish for contempt.

(VIII.) Whenever the evidence of any absent witness shall be required out of the jurisdiction of the Court in which the proceedings for which the evidence is wanted may be pending, and the Commission shall be directed to any Court, such Court may punish the wilful disobedience of any such order as aforesaid as a contempt, notwithstanding it shall not itself have made such order, with the same amount of punishment as in other cases of refusing or neglecting to give testimony.

Interpretation of words "witness" and "witnesses" in Act VII., 1841.

172. The words "witness" and "witnesses" in Act VII of 1841 respectively include any party or parties to a suit, and the said Act should be read as if the words "or party" "or parties" had been used in such Act in conjunction with the words "witness" "or "witnesses" respectively. Provided that the depositions of a party taken under the provisions of this para, at the instance of any opposite party, may be read in evidence by, or on behalf of such last mentioned party, without the proof required by Section 5 of the said Act. Provided also that no deposition of any party taken under the same provisions be read or used in evidence unless taken and read at the instance of some opposite party, or unless it be proved that the deponent is unable, from sickness or infirmity, to attend to be personally examined, or is, without collusion or any reference to the suit, at so great a distance from the Court, that, in the judgment of the Court, it would be unreasonable to require his personal attendance in Court for the purpose of giving such evidence, in which last-mentioned case it is discretionary with the Court, having regard to the nature of the case and of the evidence given, either to allow or to refuse such deposition to be read.(o)

173. No appeal lies from any order or decision of a Judge with respect to summoning or examining any party to a suit, or as to allowing a deposition to be read under the preceding para.(p)

Forms of Commission.

174. The following forms of Commission should be used by the Courts when the examination of absent witnesses has to be taken under the provisions of Act VII of 1841.

No. 1.

In the Court of _____ of the Zillah of _____

(o) Sec. 15, Act X., 1855.

(p) Sec. 16, Ibid.

Ramasawmy—Plaintiff,

versus

Veerasawmy—Defendant.

To A. B

Whereas, by an order dated the ——— in the above cause, it has been directed that the evidence of C. D. and E. F., residing at ———, be taken by Commission under the provisions of Act VII of 1841, and whereas in pursuance of such order, you are appointed and required to take the evidence of the said witnesses; You are hereby empowered and required to take the examinations and depositions of the said witnesses, upon oath or affirmation as provided in Section 4 of the said Act; *upon the interrogatories hereunto annexed*, (*or* on the points indicated in the annexed extract from the Court's Proceedings, *as the case may be*) which duty you shall perform truly, faithfully, and without partiality to any or either of the parties in the cause; examining the witnesses in the presence of the parties or their Agents (if in attendance) who shall be at liberty to question them on the points specified, and returning this Warrant of Commission, *together with the interrogatories hereunto annexed*, and the examinations of the said witnesses *thereon*, to this Court, on or before the——day of——next.

Given under my hand and the seal of this Court, this——day of——185— .

L. S. G. H.

No. 2.

In the Court of ——— of the Zillah of ———

Ramasawmy—Plaintiff,

versus

Veerasawmy—Defendant.

To A. B. District Moonsiff of ———

Whereas, by an order dated the ——— in the above cause, it has been directed that the evidence of C. D. and E. F. residing at ——— be taken by your Court under the provisions of

Act VII of 1841; You are hereby required to take the examinations and depositions of the said witnesses upon oath or affirmation as prescribed in Section 4 of the said Act, *upon the interrogatories hereunto annexed*, (*or*, on the points indicated in the annexed extract from the Court's Proceedings, *as the case may be*;) which duty you shall perform truly, faithfully and without partiality to any or either of the parties in the cause; examining the witnesses in the presence of the parties or their Agents (if in attendance), who shall be at liberty to question them on the points specified, and returning this Warrant of Commission *together with the interrogatories hereunto annexed*, and the examinations of the said witnesses *thereon*, to this Court, on or before the —— day of —— next.

Given under my hand and the seal of this Court, this —— day of ——185—.

(L. S.) G. H.

No. 3.

In the Court of ———— of the Zillah of ————

Ramasawmy—Plaintiff,

versus

Veerasawmy—Defendant.

To A. B. Judge of ———

Whereas, by an order dated the ——— in the above cause, it has been directed that the evidence of C. D. and E. F. residing at ——— be taken by your Court, under the provisions of Act VII of 1841; You are hereby requested to take the examinations and depositions of the said witnesses, upon oath or affirmation, as provided in Section 4 of the said Act, *upon the interrogatories hereunto annexed*; (*or* on the points indicated in the annexed Extract from the Court's Proceedings; *as the case may be*,) the examinations to be held in the presence of the parties or their Agents, (if in attendance,) who shall be at liberty to question the witnesses on the points specified, and to return this Warrant of Commission *together with the interrogatories hereunto annexed*, and the examinations of the said witnesses *thereon* to this Court, on or before the ——— day of ——next.

Given under my hand and the seal of this Court, this—— day of ——— 185 —.

L. S. G. H.

No. 4.

In the Court of ——— of the Zillah of ———

Ramasawmy—Plaintiff,

versus

Veerasawmy—Defendant.

To A. B., Judge of the Court of Small Causes, Madras.

Whereas, by an order dated the ——— in the above cause, it has been directed that the evidence of C. D. and E. F. residing at ——— be taken by your Court under the provisions of Act VII of 1841; You (or any or either of you) are hereby requested to take the examinations and depositions of the said witnesses, upon oath or affirmation as provided in Section 4 of the above Act, *upon the interrogatories hereunto annexed*, (*or* on the points indicated in the annexed Extract from the Court's Proceedings; *as the case may be*,) the examinations to be held in the presence of the parties or their Agents (if in attendance), who shall be at liberty to question the witnesses on the points specified, and to return this Warrant of Commission, *together with the interrogatories hereunto annexed*, and the examinations of the said witnesses *thereon* to this Court, on or before the——day of——next.

Given under my hand and the seal of this Court, this—— day of——185—.

L. S. G. H.

NOTE.—*The words in italics in the above Forms should be omitted if interrogatories be not sent.*

Form No. 1 is to be addressed to Ministerial Officers of the Court, or other persons who may be residing within the jurisdiction of the Court issuing the Commission.

Form No. 2 is to be addressed to a Court of the Zillah which may be inferior in grade to the Court issuing the Commission.

Form No. 3 is to be addressed to a Court of another Zillah, equal or inferior in grade to the Court issuing the Commission, or (in cases of doubt as to which is the most convenient) to the Judge of such other Zillah; or (under special circumstances) to any individual residing in such other Zillah. In the event of the Commission being addressed to the Judge, and that Officer, under the discretion vested in him by law, deeming it expedient to direct the Commission to a Court subordinate to him, it will be sufficient for this purpose that he endorse on the original Commission, the following record:

To A. B. Principal Sudr Ameen,

or District Moonsiff of ——— (as the case may be).

You are hereby authorized and directed to conform to the requisitions of this Warrant of Commission, making your Return direct to the Court issuing it.

Witness my hand and seal of Office this —— day of &c.

Form No. 4 is to be used when the evidence of witnesses residing in Madras may require to be taken.(*q*)

Examinations may be taken otherwise than upon Interrogatories.

175. The Act permits examinations to be taken otherwise as well as upon interrogatories, but in all practicable cases interrogatories should accompany the Commission.(*r*)

Examining officer may cross-question.

176. An Officer examining witnesses under Commission may put such further questions as may appear to him to be necessary to elicit the truth, or to draw forth full explanation upon the points on which the answers have not been sufficiently explicit, or have been given in a prevaricating manner. Unless the examining Officer does put such questions, the evidence obtained from the Witnesses must generally be unsatisfactory. In order therefore that the Officers to whom Interrogatories are sent may cross-examine the witnesses, a copy of the Points given to the parties to prove should be sent together with such Interrogatories.(*s*)

Points should accompany Interrogatories.

Evidence of witnesses in Ceylon;

177. In the event of cases occurring in which answers are required to interrogatories addressed to persons in Ceylon, the proper course to pursue is for the Court requiring the answers

(*q*) C.O. 13th November 1843. No. 85. (*s*) C. O. 23d November 1831.
(*r*) Ibid.

to forward the Interrogatories, with an English translation, to the Secretary to Government in the Judicial Department, accompanied with a letter requesting that answers may be obtained.(*t*)

178. When the evidence of persons residing in Foreign European Settlements or in the Territories of Native States is required, the Court should transmit written Interrogatories for the examination of such persons, direct to the British Representatives in such Settlements or Territories, who will take the proper measures for obtaining replies to them in such a shape as to be available in a Court of Law.(*u*) in Foreign European Settlements, or in Native Territories;

179. The Lieutenant of Police at Pondicherry, under orders from the French Government, will forward to the Courts in the Provinces, at their requisition, Native inhabitants of the French Territory, who may be required to give evidence in such Courts. On such occasions the Mofussil Judges should address themselves direct to the above Officer of the French Government. In cases where any difficulty may arise after such a communication, the Judges should refer themselves to the Collector of South Arcot.(*v*) in Pondicherry.

(*t*) C. O. 18th May 1827.
C. L. 12th June 1850.

(*u*) C. O. 15th February 1830, A.

(*v*) C. O. 11th May 1831.

INTEREST.

12 per cent to be the highest rate awardable.

1. The Courts cannot decree interest on money lent, above the rate of 12 per centum per annum.(*w*)

If a lower rate be stipulated, such rate to be adjudged.

2. Where a lower rate of interest may have been stipulated between the parties than 12 per cent. per annum, the rate so stipulated and no other should be adjudged.(*x*)

12 per cent only to be decreed on Bonds executed prior to Regulation XXXIV, 1802;

3. Where suits may be prosecuted on Bonds or Instruments executed prior to the issue of Regulation XXXIV of 1802, the Courts should not decree a higher rate of interest than 12 per cent. per annum.(*y*)

and on Instruments stipulating a higher rate.

4. Bonds or other Instruments, whether executed before or after the promulgation of Regulation II of 1825, are recoverable in Courts, notwithstanding their stipulating for the payment of a higher rate of interest than 12 per cent. per annum, subject of course to the 12 years' rule of limitation; but the Courts cannot allow more than 12 per cent. upon such instruments.(*z*)

Up to what date interest should be adjudged and decreed.

5. When interest is adjudged by the Courts in their Decrees, it should be invariably granted up to the date of the Decree and not of the Plaint only, unless reasons for a contrary proceeding are stated in the body of the Decree. When it is so adjudged up to the date of the Decree, payment of the same from that date, up to the date of execution of the Decree, should be enforced by an order of Court, unless delay in the execution be attributable to the Court itself, or the unsuccessful party prove, to the satisfaction of the Court, that unnecessary delay has taken place on the part of the successful party in moving for execution.(*a*)

6. But the delay of a gainer of suit is no bar to his recovering interest during the period of such delay, as it is always optional for the party cast to insist upon satisfying the

(*w*) Sec. 2, Reg. XXXIV., 1802.
(*x*) Sec. 3, Ibid.
(*y*) Sec. 7, Ibid.
(*z*) Sec. 7, Reg. II., 1825.
C. O. 24th January 1828.
(*a*) C. O. 11th May 1829.

Decree, and cases may occur in which delay in the execution may be equally advantageous to the interest of both parties.(*b*)

Interest to be levied on amount decreed and costs.

7. Interest should be levied on the whole sum decreed, costs inclusive, from the date of Decree to that of execution,(*c*) but not upon the interest also.(*d*) This rule has effect since the 28th September 1846.(*e*)

Rent and profit may be adjudged.

8. In cases where lands, houses or other property yielding rent or produce of any kind, may be adjudged to a Plaintiff together with rent or profit for some past period, the Court may award the rent, profit, &c., which may be proved to have been received from such property, or which the party in possession may be proved to be responsible for, up to the date of the execution of the Decree; but though the property may be of a productive kind, the Court must be careful not to assume that profit or income accrued from it when it may be of a precarious nature. The actual produce therefrom must be established by evidence.(*f*)

9. The provisions of the above para. are only applicable to cases in which lands or houses, on which rent &c. may be due, are claimed with the rent itself.(*g*)

When interest exceeding principal may be adjudged.

10. Where the interest on debts may have accumulated so as to exceed the Principal the Courts should not decree a greater sum for interest than the amount of such principal money; (*h*) unless the accumulation has been subsequent to the institution of the suit, and not ascribable in any degree to procrastination on the part of the creditor.(*i*)

11. The provisions of the above para apply only to cases in which interest may be unpaid and in arrears. A sum equal to the Principal is recoverable as interest exclusive of payments made, which payments must ordinarily be carried to the head of interest, unless otherwise stipulated in the agreement entered into by the parties.(*j*)

(*b*) S. U. Pro. 28th September 1846.
(*c*) Ibid, 28th September 1846.
(*d*) Ibid, 26th April 1847.
(*e*) Ibid, 25th May 1847.
(*f*) C. O. 22d October 1829.
(*g*) B. S. U. S. A. 36 of 1852.
(*h*) Sec. 4, Reg. XXXIV., 1802.
(*i*) C. O. 23d June 1829.
(*j*) D. S. U. S. A. 18 of 1848.

Compound interest on intermediate adjustment of accounts not allowable.

12. The Courts should not decree to creditors compound interest arising from intermediate adjustments of accounts. But this rule does not extend to cases where accounts between the parties having been adjusted, the former bonds may have been cancelled and new bonds taken for the aggregate amount of the principal and the legal interest remaining due upon the adjustment, consolidated into principal money.(*k*)

From what time interest may be allowed.

13. Upon all debts or sums payable by virtue of some written agreement at a certain time, the Court may, *if it think fit*, allow interest to the creditor at a rate not exceeding the current rate of interest from the time when such debts or sums were payable; if payable otherwise, then from the time when demand of payment may have been made in writing, if such demand gave notice that interest would be claimed from the date thereof until the term of payment; provided that interest be legally payable in all such cases.(*l*)

How the Courts should act in cases of mortgages of real property where the mortgagee has had the usufruct.

14. In cases of mortgages of real property, in which the mortgagee may have had the usufruct of the mortgaged property, whether he held it in his own possession, or not, the usufruct should be allowed to the mortgagee in lieu of interest, if it had been so stipulated between the parties, and such agreement been made prior to the issue of Regulation XXXIV of 1802. In cases of agreements of a subsequent date, the same interest only should be allowed on such mortgage bonds as on other bonds. All such mortgages should be considered to be virtually, and in effect, cancelled and redeemed whenever the principal sum of money, with the simple interest due upon it, may have been recovered from the usufruct of the mortgaged property, or otherwise liquidated by the mortgager.(*m*)

15. In usufructory mortgages where the receipts do not exceed the rate of interest stipulated in the Bond, or the legal rate of interest, such receipts must be calculated as simple current interest and not as accumulating compound interest towards the liquidation of the Principal. It is only when the receipts exceed legal interest or the rate mutually agreed on, that any liquidation of the original debt can take place.(*n*)

Rules for the adjustment of

16. For the adjustment of accounts in the cases of mort-

(*k*) Sec. 5, Reg. XXXIV., 1802.
(*l*) Act XXXII, 1839.
(*m*) Sec. 8, Reg. XXXIV, 1802.
(*n*) D. S. U. S. A. 61 of 1847.

gages above mentioned, where the mortgagee may have had the usufruct of the mortgaged property, the mortgagee should deliver into Court the accounts of his gross receipts from the property mortgaged, and also of his expenditure for the management or preservation of it. The mortgagee should swear or make solemn affirmation that the accounts delivered are true and authentic, and the mortgager is at liberty to question the accounts and to state his objections on evidence. The Court should then adjust the accounts accordingly.(o)

accounts in cases of such mortgages.

17. The above rules regarding interest do not extend to respondentia loans or policies of insurance, the interest on which should be regulated by the terms of the deeds, and the laws and usages which prevail respecting such transactions.(p)

Respondentia loans or policies of iusurance not affected by these provisions.

18. Arrears of revenue bear interest at one per cent. per mensem.(q)

12 per cent on arrears of revenue.

19. In suits decided by Officers in charge of the Police, and by Military Punchayets, interest above twelve per cent. per annum cannot be allowed even where more may have been stipulated; nor interest to an amount exceeding the Principal; nor compound interest, except where a former bond has been cancelled and a new one entered into for principal and interest consolidated, in which case they may decree interest on the amount of the new bond as on principal money.(r)

What rate may be adjudged by Officers in charge of Police and by Military Punchayets,

20. It is competent to a Military Court of Requests to allow the interest agreed on between the parties, provided the same does not exceed the usage of the country in ordinary money transactions.(s)

by Military Courts of Requests,

21. Village Moonsiffs, and Village and District Punchayets, are prohibited from allowing in their Decrees a higher rate of interest in any case than the Courts of Adawlut are permitted to allow.(t)

by Village Moonsiffs and Punchayets,

22. When an Appellate Court may confirm the Decree of a lower Court, interest should be adjudged at the rate of 12 per

by Appellate Tribunals.

(o) Sec. 9, Reg. XXXIV, 1802.
(p) Sec. 10, Ibid.
(q) Sec. 8, Reg. XXVII, 1802.
(r) Sec. 32, Reg. VII, 1832.
(s) Sec, 9, Act XI. 1841.
(t) Sec. 32, Reg. IV, 1816.
Sec. 14, Reg. V, 1816
Sec. 13, Reg. VII, 1816.

cent. per annum on all sums receivable by the Respondent under the Decree passed in his favor, from the date of such Decree.(*u*)

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23. The above rules were in force previous to the enactment of Act XXVIII of 1855, by which however they have been materially altered; but as this Act has effect only from the 1st of January 1856, the said rules have been inserted in this Chapter to guide the Courts in awarding interest upon transactions *prior* to the passing of the above Act, the provisions of which are as follows:

Laws repealed.

(I.) Section XXX of the Act of Parliament, passed in the thirteenth year of the reign of his late Majesty King George the Third, intituled "An Act for establishing certain Regulations for the better management of the affairs of the East India Company as well in India as in Europe," shall not apply in any part of the territories in the possession and under the Government of the said Company to any bond, contract, or assurance whatsoever, which shall be made or entered into within the said territories after the passing of this Act; and the several parts of Regulations mentioned in the Schedule hereto annexed, and all laws in force in any part of the said territories relating to Usury, are hereby repealed.

What rate of interest shall be decreed in suits.

(II.) In any suit in which interest is recoverable, the amount shall be adjudged or decreed by the Court at the rate (if any) agreed upon by the parties; and if no rate shall have been agreed upon, at such rate as the Court shall deem reasonable.

Rate of interest upon a judgment or decree.

(III.) Whenever a Court shall direct that a judgment or decree shall bear interest, or shall award interest upon a judgment or decree, it may order the interest to be calculated at the rate allowed in the judgment or decree upon the principal sum adjudged, or at such other rate as the Court shall think fit.

Contract for the usufruct of property in lieu of interest, to be binding.

(IV.) A mortgage or other contract for the loan of money, by which it is agreed that the use or usufruct of any property shall be allowed in lieu of interest, shall be binding upon the parties.

What amount of interest to be deposited in certain cases of con-

(*u*) Sec. 35, Reg. IV, 1802. | Sec. 12, Reg. V, 1802.

entered into, the amount of interest to be deposited shall be at the rate stipulated in the contract, or, if no rate has been stipulated and interest be payable under the terms of the contract, at the rate of twelve per centum per annum. Provided that, in the latter case, the amount deposited shall be subject to the decision of the Court as to the rate at which interest shall be calculated.

ditional sales under the Bengal Regulations.

Proviso.

(VI.) In any case in which an adjustment of accounts may become necessary between the lender and the borrower of money upon any mortgage, conditional sale of landed property, or other contract whatsoever, which may be entered into after the passing of this Act, interest shall be calculated at the rate stipulated therein; or, if no rate of interest shall have been stipulated and interest be payable under the terms of the contract, at such rate as the Court shall deem reasonable.

Rate of interest on future adjustments of accounts.

(VII.) Nothing hereinbefore contained shall prejudice or affect the rights or remedies of any person, or diminish or alter the liabilities of any person, in respect of any act done, or contract entered into, previously to the passing of this Act.

Transactions previous to this Act not to be affected.

(VIII.) This Act shall commence and take effect from the 1st day of January 1856.

Commencement of Act.

SCHEDULE.

Sections II, IV, V and VI, Regulation XXXIV 1802, of the Madras Code; and Section VIII of the same Regulation, so far as it may be deemed to limit the rate of interest to be allowed on mortgage bonds.

Section XXII, Regulation IV. 1816 of the same Code.

Section XIV, Regulation V. 1816 of the same Code.

Section XV, Regulation VI. 1816 of the same Code.

Section XIII, Regulation VII. 1816 of the same Code.

So much of Section VII, Regulation II. 1825 of the same Code as limits the rate of interest to be allowed by the Courts on bonds or other instruments which shall be entered into after the passing of this Act.

JURISDICTION.

General jurisdiction of the Courts.

1. The Zillah and Subordinate Zillah Courts are empowered to take cognizance of all suits and complaints respecting the succession or right to real or personal property, land-rents, revenues, debts, accounts, caste, contracts, partnerships, marriages, claims to damages for injuries, and generally of all suits and complaints of a Civil nature; provided the landed or other real property to which the suit or complaint may relate be situated, or in all other cases the cause of action have arisen, or the Defendant at the time the suit commenced resided as a fixed inhabitant, within the limits of the Zillah over which their jurisdiction may extend.(*v*)

2. District Moonsiffs are also competent to hear and determine suits of a similar nature; provided the cause of action has arisen, or the Defendant at the time of the commencement of the suit has resided as a fixed inhabitant within the local limits of their jurisdiction, provided also, that if an action be brought against several Defendants, of whom one is resident as a fixed inhabitant within the local limits of the jurisdiction of the Court within the jurisdiction of which the cause of action has arisen, the action can be brought in that Court.(*w*)

Limit of jurisdiction of Village Moonsiffs.

3. Village Moonsiffs can receive and determine suits for money or other personal property of an amount or value not exceeding 10 Rupees.(*x*) But they are prohibited from trying any suit in which they or any of their immediate servants are personally interested;(*y*) also suits against persons not actually resident within their jurisdiction at the time of the institution of the suit.(*z*) All suits for personal damages of whatever nature are likewise excluded from the cognizance of Village Moonsiffs.(*a*)

(*v*) Sec. 5, Reg. II, 1802.
(*w*) Sec. 2, Act XIX, 1855.
(*x*) Cl. 1, Sec. 5, Reg. IV, 1815.
(*y*) Sec. 7, Ibid.
(*z*) Sec. 8, Ibid.
(*a*) Sec. 6, Ibid.
C. O. 19th March 1824.

4. District Moonsiffs can receive and determine suits for land exempt from the payment of revenue, of an annual produce not exceeding 100 Rupees, and suits for any other description of real property as well as for sums of money or other personal property of a value or amount not exceeding 1000 Rupees.(*b*) But they are prohibited from hearing or determining any suits in which they themselves, their relatives or dependants may be parties;(*c*) also suits instituted in *formâ pauperis*,(*d*) unless referred to them by the Zillah Judge.(*e*) of District Moonsiffs,

5. Sudr Ameens can receive and determine suits for land exempt from the payment of revenue, the annual produce of which land does not exceed 250 Rupees, and for any other description of real property, as well as for sums of money or other personal property of a value or amount not exceeding 2500 Rupees;(*f*) but they cannot receive Pauper suits unless referred to them by the Zillah Judge.(*g*) of Sudr Ameens,

6. Principal Sudr Ameens and Subordinate Judges have original jurisdiction of all regular suits for any amount or value less than 10,000 Rupees.(*h*) of Principal Sudr Ameens and Subordinate Judges,

7. Zillah Judges have original jurisdiction of all regular suits for 10,000 Rupees and upwards.(*i*) of Zillah Judge,

8. Suits may be brought on a Bond or other Instrument either within the jurisdiction where the cause of action may arise from its non-performance, or where the Defendant has residence as a fixed inhabitant. Where suit may be instituted.

9. Under the above law, the jurisdiction in suits and complaints, respecting debts, accounts, contracts, partnerships, marriage, caste, and claims to damages for injuries (all of which fall within the definition of personal suits) may depend either on the locality of the cause of action, or on the place of the Defendant's fixed habitation.(*j*)

(*b*) Cl. 2, 3, 4 and 5 Sec. 11, Reg. VI, 1816.
Sec. 5, Reg. III, 1833.
(*c*) Cl. 2, Sec. 12, Reg. VI, 1816.
(*d*) Cl. 3, Ibid.
(*e*) Cl. 2, Sec. 3, Reg. IV, 1825.
(*f*) Sec. 4, Reg. III, 1833.
Sec. 1, Act IX, 1844.
(*g*) Cl. 2, Sec. 3, Reg. IV., 1825.
(*h*) Sec. 4, Act VII, 1843.
(*i*) Sec. 3, Ibid.
(*j*) C. O. 30th March 1840, No. 64.

Suits for real property in Northern Circars not cognizable, beyond 26th February 1768.

10. The Courts are prohibited from hearing, or determining, the merits of any suit for the recovery of lands, grounds, or other real property situated within either of the five Northern Circars, if the cause of action have arisen previous to the acquisition of those Provinces by the East India Company, which, for this purpose, should be reckoned from the 26th of February 1768.(*k*)

The same rule applicable to Cuddalore and other places.

11. The said period (of the 26th February 1768) is also applicable as to the purpose above mentioned in respect to the Town and District of Cuddalore, the Jagheer lands or other territories, at that time subject to the jurisdiction of the Company's Government.(*l*)

In cases subsequent to 1768 the date of acquisition of territory to become period of limitation.

12. In cases not falling within the above descriptions, and where the Country, Town or District may have accrued to the possession of the Company's Government at any time subsequent to the 26th of February 1768, the date of the particular acquisition should in every instance become the period beyond which no civil suit or cause of action is cognizable by the Courts; provided however that the date of such acquisition does not exclude from the cognizance of the Courts any suit where the cause of action may have arisen within 12 years antecedent to Reg. II, of 1802.(*m*)

Exceptions.

13. All suits where the cause of action may have arisen within 12 years antecedent to the enactment of Reg. II of 1802 are cognizable by the Courts notwithstanding the Country, Town or District in which the cause of action has arisen may not at that time have been subject to the Company's Government.(*n*)

What suits for real property &c. excluded from cognizance of Moffussil Courts as coming within jurisdiction of Supreme Court.

14. The Courts cannot receive or entertain any suit, under any pretence whatever, relating to any land, house, tenement or hereditament; nor a dispute regarding the boundaries of lands, houses, tenements or hereditaments situated within the Town of Madras or the limits of the Supreme Court of Judicature at Madras, which for this purpose is declared to be bounded as follows:

Limits of jurisdiction of Supreme Court.

That the southern limits shall be the southern bank of the St. Thomé river, as far as the road leading to the Long Tank; that the limits shall then be continued in a northern direction,

(*k*) Cl. 1, Sec. 18, Reg. II, 1802.
(*l*) Cl 2, Ibid.
(*m*) Cl. 3, Ibid.
(*n*) Ibid.

along the bank of the Long Tank, and from thence along the bank of Nungumbaukum Tank, as far as the village of Chetput, upon the banks of the Poonamallee river; that the limits shall be continued, in the same direction, to the villages of Kilpauk and Perambore, and that from the latter village, it do take an eastern direction to the Sea, so as to include the whole village of Tandearpettah; also that no lands, situated to the southward of the Saint Thomé river, or to the westward of the bank of the Long Tank, or of the Nungumbaukum Tank, shall be considered within the limits of the said town of Madras; but that all the lands included in the said villages of Chetput, Kilpauk, Perambore, and Tandearpettah, shall be considered within the said limits.(o)

Suits against residents of Madras also cannot be entertained.

15. Nor can the Courts entertain any suit whatever against a person who may be a resident of Madras, or of any place within the said limits, at the time the suit may be instituted.(p)

Exceptions.

16. But the prohibition contained in the preceding two paras does not preclude the Courts from entertaining any suit concerning marriage or caste, in which no money or other valuable thing may be demanded or decreed, although the cause of action may have arisen, or the Defendant may reside or have resided at the time the suit commenced, within the limits of the Supreme Court.(q)

17. And it has been ruled that an action for land situated within the jurisdiction of a Zillah Court, will lie to such Zillah Court against the Proprietor thereof, even though he be a resident of Madras.(r)

When suits for discharge of private debts of Native Princes, Rajahs, Zemindars &c. are not cognizable by the Courts.

18. The Courts cannot receive any suit whatever for the discharge of the private debts of any Native Prince, Rajah, Zemindar, Poligar or other independent Land-holder, who did not at the time of entering into such engagement stand amenable to a Court of Justice, or some other public authority for their discharge.(s)

Claims to certain Enams &c. not cognizable by the Courts.

19. The Courts are prohibited from taking cognizance of any claims to hereditary or personal grants of money or land revenue however denominated, conferred by the authority of the Governor in Council, in consideration of services rendered

(o) Sec. 12; Reg. II, 1802.
(p) Ibid.
(q) Ibid.
(r) S. U. Pro. 19th March 1838.
(s) Sec. 8, Reg. II. 1802.

to the State, or in lieu of resumed offices or privileges, or of Zemindaries or Polliems forfeited or held under attachment or management by the Officers of Government, or as a Yeomiah or charitable allowance, or as a Pension; and also of any claim for the recovery or continuation of, or participation in, such grants, whether preferred against private individuals or public Officers, unless the Plaint is accompanied by an order signed by the Chief or other Secretary to Government, referring the complaining party to seek redress in the established Courts of Judicature. The power to decide on such claims is reserved exclusively to the Governor in Council, after due investigation by such persons and in such manner as he may deem fit.(*t*)

Government alone can decide on them.

20. The restriction contained in the above para applies also to all similar grants of money or land revenue within the territories subject to this Presidency, which, having been made by any Native Government, have been confirmed or continued by the British Government.(*u*)

21. Claims to the possession of, or succession to hereditary village, or other offices in the Revenue or Police Department, or to the enjoyment of any of the emoluments annexed thereto, are not cognizable by the Courts.(*v*)

Classification of Enams.

22. The following classification of the several Enams which are excluded from the jurisdiction of the Courts was circulated by the Sudr Adawlut to guide the Courts in suits relating to Enams:

First. Endowments made for pious and beneficial purposes, such as are embraced by Regulation VII of 1817.

Second. Enams conferred by Government for good services performed, or as charitable allowances. These are distinctly specified in Regulation IV of 1831, and the provisions of this Regulation are extended by Act XXXI of 1836 to similar grants made by any Native Government and confirmed by the British Government. Enams of this nature emanate from the Government, and are consequently liable to be at any time sequestered. Such being the case, it is evident that no alienations of such Enams can take place.

Third. Enams annexed to various offices "as wages for the performance of public services." Claims to such offices are ex-

(*t*) Sec. 2, Reg. IV, 1831.
(*u*) Act XXXI, 1836.
(*v*) Cl. 1, Sec. 3, Reg. VI, 1831.

pressly declared by Clause first, Section 3, Regulation VI of 1831, not to be cognizable by the Courts of Judicature.

23. With respect to the 1st Class of Enams, the Court of Sudr Adawlut observed that under the provisions of Section 14, Regulation VII of 1817 they are cognizable by the Courts; that in respect to the 3d Class it has been enacted that all claims relating to them shall be "adjudicated exclusively by the Officers of Government in the Revenue Department," and they are therefore excluded from the jurisdiction of the Civil Courts; and that as the description of Enams classed under the 2d head is of very extended application, all such Enams as do not fall within either of the two other descriptions of grants must be included under the 2d head.(*w*)

No Court is to receive a suit previously instituted in another competentCourt;

24. If a suit have been instituted in a Court of any Zillah in which it may have been cognizable, no other Court can entertain a suit for the same cause of action. On proof being made in the Court in which the second suit may be commenced that a prior suit for the same cause of action has been instituted in another Court of competent jurisdiction, the Court in which the second suit may be brought is to dismiss it with costs to be paid by the party so suing.(*x*)

or which may have been decided by any former competent Judge or Officer.

25. The Courts are prohibited from entertaining any cause which, from the production of a former Decree or the Records of the Court or other Instrument, may appear to have been heard and determined by any former competent tribunal or authority. If any doubt should arise as to the competency of such former tribunal or authority, the circumstances of the case should be reported to the Sudr Adawlut, and their instructions awaited.(*y*)

When these rules do not apply.

26. The provisions of the two preceding paras do not apply to a case wherein only one of several Defendants had been declared responsible for a debt, and he subsequently sues the other Defendants for a settlement of accounts ;(*z*) nor are they applicable when the former suit related to a mortgage transaction, and the subsequent suit to a proprietary right in the same property.(*a*)

27. Nor when the former suit may be withdrawn by the parties themselves.(*b*)

(*w*) S. U. Pro. 12th July 1855.
(*x*) Sec. 9, Reg. II., 1802.
(*y*) Sec. 10, Reg. II., 1802.
(*z*) D. S. U. S. A. 69, of 1851.
(*a*) Ibid. No. 18, of 1852.
(*b*) S. U. Pro. 27th September 1849.

28. Nor to suits collusively instituted during the absence in a foreign country, of the principal party.(c)

29. Nor to suits instituted by a third party to set aside a Decree obtained by collusion.(d)

30. Where a question of right may be once set at rest by a competent Court, a suit between the same parties, for the trial of the same question, cannot be entertained.(e)

31. A party, having once acknowledged, cannot afterwards demur to the jurisdiction of a Court.(f)

32. The Court in Appeal will not entertain an objection to the jurisdiction of a tribunal, which was not advanced in the original pleadings.(g)

Restriction in cases decided under Sec. 16, Reg. V., 1822.

33. The Courts cannot admit fresh suits for the same cause of action which have been decided in Appeal under Section 16, Regulation V of 1822; but the decision of a Collector under Section II of that Regulation does not bar an original suit to try the proprietary right to lands or crops, that decision going only to determine the temporary right of occupancy or possession.(h)

Courts prohibited taking cognizance of criminal matters.

34. The Courts cannot interfere in any respect in any cause or matter of a criminal nature cognizable by the Magistrates, the Session Courts, the Foujdaree Adawlut, or any other Courts for the trial of cases of a criminal nature; except for contempt and perjuries committed in open Court.(i)

No right of slavery can be enforced.

35. No rights arising out of an alleged property in the person and services of another as a slave can be enforced by any Court of Civil Judicature.(j)

When suits against the Native Military may be received.

36. Suits against Native Military Officers, Soldiers, and other persons amenable to the Articles of War for the Native Army, unless for an amount exceeding 200 Rs., cannot be entertained by any of the Courts of Civil Judicature.(k)

12 years' rule of limitation.

37. The Courts are prohibited hearing, trying or determining the merits of any suit whatever, against any person or persons,

(c) S. U. Pro. 19th November 1849.
(d) S. U. Dy. 21st March 1842.
(e) D. S. U. S. A. 6, of 1824.
(f) Ibid. 3, of 1810.
(g) Ibid. 12, of 1823.
(h) C. O. 23d April 1828.
(i) Sec. 11, Reg. II., 1802.
(j) Sec. 2, Act V., 1843.
(k) Sec. 2, Act XI., 1841.

if the cause of action have arisen 12 years before any suit had been commenced on account of it.(*l*)

38. The exceptions to this rule of limitation are : Exceptions.

1*st*. Where the Plaintiff can prove that he had demanded the money or matter in dispute, and that the Defendant had, within the 12 years preceding the institution of suit, admitted the truth of the demand, or promised to pay the money.

2*d*. Where the Plaintiff can prove that he had preferred his claim within the above period to a competent Court, or person having authority, (whether local or otherwise for the time being) and can assign satisfactory reasons for not having proceeded with such previous suit.

3*d*. Where the Plaintiff can prove that either from minority or other good and sufficient cause he was precluded previously obtaining redress.

4*th*. Where the claim may be founded on a Bond in course of payment by instalments, or of which any proportion had been paid within the said period of 12 years.

5*th*. Where the claim may be on a mortgage, the period for rendering mortgages obsolete and unactionable being determinable by the laws of the country.(*m*)

39. A suit therefore to prevent being barred by the operation of the Statute of limitation must necessarily be brought *within* the period limited under it ; but an acknowledgment of claim is not of necessity cramped by the like condition. The occurrence of such acknowledgment is a distinct admission on the part of the person liable for it that the claim is alive, and if so it is actionable, and cannot be extinguished and rendered unactionable, unless the period specified in the Statute, calculating from the date of such admission should have run out without any renewal of admission, or any institution of a suit having taken place. Under this view then every admission of a claim serves to revive it for the period laid down in the said statute.(*n*)

40. It has been ruled that the slightest acknowledgment of a debt is sufficient to take a case out of the rule of limitation.(*o*)

(*l*) Cl. 4, Sec. 18, Reg. II, 1802.
(*m*) Ibid.
(*n*) D. S. U. S. A. 24 of 1851.
(*o*) S. U. Dy. 26th January 1824.

41. The rule of limitation should be taken to commence from the time when a party may be in a situation to sue.(*p*)

42. A claim for the possession of land cannot be held to be kept alive by any suit or application to the Revenue Authorities for the registry of such land.(*q*)

43. If undue means have been resorted to for obtaining a decree, it is the duty of the party injured, at the time, and not upwards of 12 years afterwards, to bring the subject to the notice of competent authority.(*r*)

44. The rule of limitation was declared to be applicable to a case where a Plaintiff claimed as cousin, a partition of ancestral property; the Plaintiff's father having died 25 years before the institution of the suit, and not having resided at the time of his death as a joint member of the family, and it having been proved that the Plaintiff himself never lived with his cousins and no one act passed between them to show they were coparceners.(*s*)

45. A suit will not lie for land which had been in possession of the opposite party for 12 years antecedent to the enactment of Regulation II of 1802.(*t*)

46. Length of possession, when clandestine, is no bar to the institution of a suit.(*u*)

47. When a claim may not become actionable on the death of the Father of a Minor, the right of action is preserved under Clause 4, Section 18, Regulation II of 1802, *(paras* 37 *and* 38*)* during the minority of the son.(*v*)

48. The period of minority should be always deducted in favor of the Plaintiff, against whom the rule of limitations can only operate from the time of attaining his majority,(*w*) which, according to the Hindoo law, is from the 16th,(*x*) and by Section 4, Regulation V of 1804, from the 18th year.

49. Absence from the country will not render sustainable a suit instituted by a party 14 years after he had attained his majority.(*y*)

(*p*) S. U. Pro. 6th April 1820.
(*q*) D. S. U. S. A. 58 of 1851.
(*r*) Ibid, 12 of 1823.
(*s*) Ibid, 27 of 1852.
(*t*) Ibid, 8 of 1823.
(*u*) Ibid, 5 of 1823.
(*v*) Ibid, 12 of 1814.
(*w*) S. U. Pro. 24th April 1823.
(*x*) D. S. U. S. A. 10 of 1823.
(*y*) Ibid, 47 of 1852.

50. A person who has neglected to sue for rights withheld for more than 12 years after attaining his majority, is bound to show good and sufficient cause for the delay, to render his claim cognizable.(*z*)

51. Where no term for foreclosure is specified in a Mortgage Bond, the Mortgagee may at any time claim repayment of his loan, and he is not, by reason of the length of his usufructory possession, restricted from recovering the amount of the debt from the property mortgaged to him.(*a*)

52. Where a Mortgage Bond had been executed, in which the Plaintiff conditioned to redeem the mortgage within June 1831, and the Defendants conditioned that in the event of Plaintiff's failure to do so, they would pay a further sum to the Plaintiff and enjoy the land; the Sudr Adawlut held that if the balance was not so tendered, the law of limitation would not bar the institution of a suit in 1847 for the recovery of the land mortgaged.(*b*)

53. The law of limitation does not apply to an usufructory mortgage.(*c*)

54. Where the precise period at which the cause of action had its origin could not be ascertained with certainty, the matter at issue was determined exclusively upon its merits.(*d*)

Dismissal for default no bar to operation of rule of limitation.

55. The dismissal of a suit for default is no impediment to the institution of a new suit where the party is not precluded by lapse of time or otherwise than by the mere circumstances of having instituted the suit dismissed, and of such dismissal; and such dismissed suit will not prevent lapse of time under the rule of limitation being incurred.(*e*)

56. It is irregular previous to the filing of a Plaint to require the Plaintiff to show that his cause of action is not affected by the 12 years' rule of limitation, as also, after dismissing a suit on its merits, to add that the action was also barred by the "law of limitation," or that "the Court had no jurisdiction." All Plaints should be received and filed unless the valuation of the cause of action, as stated in them, exceeds in amount the jurisdiction of the Court in which they are presented, or unless

(*z*) D. S. U. S. A. 10 of 1823.
(*a*) Ibid, 13 of 1846.
(*b*) Ibid, 8 of 1853.
(*c*) Ibid, 5 of 1823.
(*d*) Ibid 1 of 1823.
(*e*) Sec. 2, Act XXIX, 1841.

they are engrossed on stamps of insufficient value, or are irregularly drawn up; in either of which cases they should be rejected for informality. The Plaint having been admitted, and the subsequent Pleadings filed, the question whether the suit is barred by lapse of time, should be heard and determined prior to the recording of "points"; as, unless this objection is overruled, the Court is absolutely precluded from entering upon an investigation of the merits of the case.(*f*)

When question of limitation should be considered.

57. But, if at any stage of a suit, it may appear that such suit had been previously heard and decided by a competent authority, it should at once be dismissed under Section 10, Regulation II of 1802.(*g*)

58. No person whatever, by reason of place of birth, or by reason of descent, is, in any civil proceeding, exempted from the jurisdiction of any of the established Courts of Judicature.(*h*)

Amenability of Collectors &c. in the Provinces to the Subordinate Zillah Courts;

59. Collectors of the Revenue and their Assistants and Native Officers; the Collectors of the Customs, their Assistants, and Native Officers employed in the collection of the Customs; the Mint and Assay Masters, and their Assistants and Native Officers, are amenable to the Subordinate Zillah Courts in the jurisdiction of which they may reside, or carry on the public business committed to their charge, for any act or acts done in their official capacity in opposition to any established Regulation.(*i*)

and of the Collector of Customs &c. at Madras to the Subordinate Zillah Court of Chingleput.

60. The Collector of Customs, his Deputy and Assistants and Native Officers employed in the collection of the Customs at the port of Madras are amenable to the Subordinate Zillah Court of Chingleput for any act or acts done in their official capacity, contrary to, or not warranted by, Act VI of 1844, in the same manner as if they resided or carried on the public business committed to their charge within the limits of the jurisdiction of the said Zillah; and the said Court is empowered to take cognizance of such suits.(*j*)

61. But no appeal from the *decisions* of European Officers can lie to a Subordinate Zillah Conurt presided over by a Principal Sudr Ameen.(*k*)

(*f*) C. O. 1st June 1852. No. 126. R. P. S. U. Cl. 17.

(*g*) C. O. 1st June 1852. No. 126.

(*h*) Sec. 2, Act XI, 1836.

Sec. 1, Act III, 1850.

(*i*) Sec. 7, Reg. II, 1802.

(*j*) Sec. 55, Reg. IX 1803.

(*k*) Sec. 6, Act VII, 1843.

62. District and Village Punchayets can investigate and decide suits for real or personal property of any amount or value, when referred to them by District and Village Moonsiffs respectively.(*l*) But all suits for damages of whatever nature are excluded from their cognizance.(*m*) Jurisdiction of Punchayets,

63. Actions of debt and all personal actions against European Military Officers not exceeding 400 Rupees are cognizable only by a Court of Requests composed of European Military Officers.(*n*) But when a Military Officer is employed at a place or station not properly a Military Station or Cantonment, or where there is no Commanding Officer who can convene a Military Court of Requests, and where there are not a sufficient number of Officers for forming such Court, he is amenable to the Civil Court of the District for a debt under 400 Rupees.(*o*) of European Military Courts of Requests,

64. A Native Military Court of Requests and no other Tribunal can receive and decide actions of debt and other personal actions of an amount not exceeding 200 Rupees, provided the Plaintiff was at the time the debt was contracted a registered Military bazarman of the Cantonment, and that the Defendant, when the cause of action arose, and when the suit was instituted, was either a Native Officer, Soldier, Driver, Farrier, Trumpeter, Drummer, unattested Recruit, Hospital Attendant, Sub Assistant Surgeon, Native Doctor, Dresser, Artificer, Laborer, Suttler, or was attached to, or serving with any part of the Army and receiving public pay in any capacity, or was a menial servant, or a Camp follower of any description, public or private.(*p*) of Native Military Courts of Requests,

65. But a Native Military Court of Requests cannot take cognizance of any suit to determine any dispute of caste, or concerning any right to real property.(*q*)

66. An Officer in immediate charge of the Police at a Military Bazar Station, and an Officer in charge of the General Camp Field Detachment Bazar, at a Station beyond the Frontier, and in all Detachments in the Field beyond the Frontier, are of Officers in charge of Police,

(*l*) Cl. 1, Sec. 2, Reg. V, 1816.
Cl. 1, Sec. 2, Reg. VII, 1816.
(*m*) C. O. 19th March 1824.
(*n*) S. U. Pro. 20th July 1850.
(*o*) S. U. Dy. 24th Dec, 1841.
S. U. Pro. 28th Jan. 1848.
(*p*) Sec. 2, Act XI, 1841.
Act XII, 1842.
Sec. 7, Art. 157, Act XIX, 1847.
(*q*) Sec. 2, Act XI, 1841.

authorized respectively to hear and determine, upon their being referred to them by the Officer Commanding, suits for the recovery of any debt not exceeding 20 Rupees, provided the Defendant was, at the time the cause of action arose, or when the suit was instituted, a Native Non-commissioned Officer, or Soldier, or belonged to any of the Military Classes specified in para 64.(r) The Plaintiff in suits before the Military Officer in charge of the Police must be a registered Military Bazar-man of the Cantonment.(s)

of Military Punchayets beyond the Frontier.

67. In suits for any amount or value not cognizable under the preceding para, nor by Military Courts of Requests, nor by any of the Civil Courts wherein the Defendant, at the time the cause of action arose, and when the suit was instituted, was a Native Officer or Soldier, or belonged to any of the Military Classes above particularized; it is competent to the Officer Commanding such Field Station or Detachment, by mutual consent of the parties, to refer the same for decision to a Native Punchayet.(t)

(r) Cl. 3, Sec. 21, Reg. VII, 1832. Sec. 41, Ibid.

(s) Act XIV, 1855.

(t) Cl. 1, Sec. 42, Reg. VII 1832.

MILITARY COURT OF REQUESTS.

1. The rules relative to the constitution, powers and mode of procedure of Native Military Courts of Requests are contained in Act XI of 1841, which provides as follows :

Powers of Officers appointed for trial of small suits in Military Bazars, and of Military Punchayets not to be affected.

(I.) All Regulations and parts of Regulations concerning Military Courts of Requests are repealed; provided always that nothing in this Act contained shall be held to alter or affect the jurisdiction of a single Officer duly authorized and appointed under the rules in force in the Madras and Bombay Presidencies for the trial of small suits in Military Bazars at Cantonments and Stations occupied by the Troops of those Presidencies respectively, or the trial by Punchayet of suits against Military persons according to the rules in force under the Madras Presidency.

Personal actions for less than 200 Rupees against persons amenable to Articles of War cognizable only by a Military Court.

(II.) Subject to the aforesaid proviso, within the territories of the East India Company, actions of debt and other personal actions against Native Officers, Soldiers, and other persons amenable to the Articles of War for the Native Forces in the Military Service of the East India Company, or residing within any Station or Cantonment, and carrying on any trade or business in a Military Bazar, shall be cognizable before a Military Court and not elsewhere, provided the value in question shall not exceed 200 Rupees, and the Defendant was a person of the description abovementioned, when the cause of action arose, and when the suit was instituted. Provided that no suit shall be brought before any Military Court under this Act to determine any dispute of caste, or concerning any right to real property.

Proviso.

Commanding Officer to convene such Court.

(III.) The Commanding Officer of any Station or Cantonment, or Officer Commanding any portion of Troops in the Field, is authorized to convene such Military Courts. And such Courts shall be composed, according to the orders of the Commander in Chief for the time being of the Presidency within which the Station or Cantonment is situate, or, in the absence of such orders, according to the discretion of the convening Officer, either of not less than three European Commissioned Officers, or of not less than three Native Commissioned Officers, and, in the latter case,

How it is to be composed.

with an European Officer of not less than five years standing, to superintend and record the proceedings. Provided that if there be not a sufficient number of Officers to constitute a Court at the Station or Cantonment where any cause of action may arise, or where the Defendant may be residing, the suit shall be determined at the nearest Station or Cantonment where a Military Court can be duly constituted as aforesaid.

Courts to be convened monthly.

(IV.) Such Military Courts shall be convened monthly, and shall be holden on some convenient day before the issue of the pay for each month.

Form of procedure.

(V.) The forms of proceeding in every such Court shall be conformable to the usages observed on trials before Courts Martial held for the Native Troops in the service of the East India Company as far as the same are applicable. And any such Court shall have the like power of summoning witnesses as is possessed by Courts Martial. Provided always, that every such Court shall have the power of examining the parties to any suit, and of requiring or dispensing with their attendance at its discretion. And every such Court shall have the like power of taking the examinations of absent parties and witnesses as is possessed by the Civil Courts of the East India Company, under Act No. VII of 1841, provided that the depositions taken under a Commission issued by any Military Court of Requests shall be receivable in evidence before any such Court subsequently held; Provided also that Commissions may be issued by Military Courts of Requests under this Act, pursuant to the provisions of Act No. VII of 1841, notwithstanding the Courts to which the Commissions may be directed, are not situate beyond the jurisdiction of such Military Courts.

Examination of parties and witnesses.

Commissions under Act VII., 1841.

Punishment of recusant witnesses, and for perjury and subornation of perjury.

(VI.) Witnesses omitting to attend, refusing to give evidence, or committing perjury, and persons suborning witnesses to commit perjury, shall be tried and punished if amenable to the Articles of War, by a Court Martial, subject to all the Rules contained in such Articles of War for the punishment of such offences in regard to trials for Military offences; and if not amenable to the Articles of War, they may be tried and punished in the nearest of the Courts of the East India Company for the administration of Criminal Justice (whether such Court have ordinarily jurisdiction over such person in criminal matters or not) in like man-

ner as if such offences had been committed in regard to any trial before such nearest Court.

Punishment for contempt.

(VII.) Any person, Civil or Military, European or Native, using menacing words, signs, or gestures, or otherwise interrupting (whether being personally present or not,) the proceedings of any Military Court of Requests, shall be punishable, if amenable to the Articles of War by a Court Martial, or if not amenable to the Articles of War, in the nearest of the Courts of the East India Company for the administration of Criminal Justice (whether such Court have ordinarily jurisdiction over such person in criminal matters or not), in like manner as if the offence had been committed in regard to any proceeding of the Court to which it is so referred.

Record of proceedings to be kept.

(VIII.) A record shall be kept of proceedings in every case tried before any Military Court of Requests. And such record shall contain the substance of the evidence given, and the nature of such evidence as may have been rejected on the ground of its not being legally admissible, or relevant, or on other grounds, and the same shall be signed by the Members of the said Court. And such record or a copy thereof shall, with as little delay as is practicable, after the conclusion of the proceedings, be transmitted by the European President, or Superintending Officer of every such Court, to the Officer Commanding the Station or Cantonment.

200 Rupees only recoverable.

Judgment for that amount bars all further claim on same account.

(IX.) Where a demand shall exceed the amount of 200 Rupees, or where several separate demands shall exceed such amount, no more shall be recoverable from any one Defendant by the same Plaintiff or Plaintiffs than the sum of 200 Rupees only—and the judgment in respect of any demand in a Court of Requests shall be a bar to the recovery of the same demand or of any other or further demand for the same cause of action in any other Court whatever, provided that the liability accrued before the time of instituting the suit in the Military Court—and it shall be competent for every such Military Court to investigate any counter claim alleged by any Defendant. And it shall be competent for every such Military Court to allow the interest for money agreed on between the parties, provided the same does not exceed the usage of the country in ordinary money transactions. And every Contract made after the passing of this Act upon which a demand for debt exceeding 20 Rupees is founded, not being money due

Contracts for sums above 20 Rupees to be in writing.

for goods bought and delivered, shall be in writing and expressed in the language of the Defendant and signed by him, or on his behalf by some other person than the Plaintiff. Provided that it shall not be competent to any Court of Requests to admit any suit for a debt which has accrued upwards of six years, unless a direct promise to pay, made within six years of the commencement of the suit, be proved.

Limitation of time.

Suits may be decided in absence of parties neglecting to proceed.

(X.) On failure of either of the parties to a suit to attend either personally or by representative, or to produce his witnesses according as he shall be required by any Military Court of Requests, such Court, on being satisfied that the party has been duly apprized of what is required of him, may proceed to the termination of the suit in his absence. And if the Decree in any such case shall be against the Plaintiff, it shall not be competent for him to commence a new suit for the same cause of action.

Commanding Officer may return Decree for revision.

Second Decree annulliable only by Commander in Chief.

New evidence may be adduced on new trial.

(XI.) It shall be lawful for the Commanding Officer to whom the proceedings have been transmitted as aforesaid to return the same for revision either by the same or another Military Court of Requests. And in every such case the second Decree shall be final, unless for error in points of law, when the same shall be transmitted to the Commander in Chief, who shall have power to annul the proceedings without prejudice to any future suit. Provided always that in the case of any new trial, the Court may receive evidence which was not adduced at the first trial.

How claims are to be preferred and brought on.

(XII.) Every Plaintiff shall prefer his claim in writing and shall deliver the same to the Station Staff Officer. The claims shall be entered in a Schedule by the Station Staff Officer, which Schedule is to be sent to Adjutants of Corps or Heads of Departments two days at least before the assembly of the Court, and the Adjutants or Heads of Departments shall be responsible that the Defendants belonging to their respective corps or establishments have been duly summoned.

Publication of Decree.

(XIII.) Every Decree of a Military Court of Requests shall be published in the Station Orders before the same is executed.

* * * * *

Beyond the Frontier, suits

(XVII.) In places beyond the Frontier of the Territories of the East India Company, actions of debts and other personal

NOTE.—*Sections* 14, 15 *and* 16 *refer to the execution of Decrees of Military Courts of Requests and are given at p. p.* 127 *and* 128.

actions may be brought before such Military Courts as aforesaid, against persons so amenable as aforesaid for any amount of demand. Provided that such Military Courts beyond the Frontier shall be composed of European Officers, and that if the amount of claim shall exceed 200 Rupees an appeal shall lie to the Court of Sudr Udalut of the nearest Presidency according to the rules in force with regard to appeals from Subordinate Civil Courts.

may be brought for any amount.

Appeal in cases above 200 Rupees.

2. No person residing within the limits of any Military Cantonment and carrying on trade therein, or who has been a trader at any Military Cantonment, can recover in any Native Military Court of Requests, held within any such Cantonment, any debt contracted in the way of trade, or for the loan of money, within any such Cantonment, by any person subject to the jurisdiction of such Court, unless the person seeking to recover the debt was, at the time of contracting it, registered as a Military Bazarman within any such Cantonment.(u)

No unregistered person can recover.

3. The persons amenable to the Articles of War and, by Section 2, Act XI of 1841, subject to the jurisdiction of Military Courts of Requests for the Native Troops, are Native Officers and Soldiers, Drivers, Farriers, Trumpeters, Drummers, unattested Recruits, Hospital Attendants, Sub Assistant Surgeons, Native Doctors and Dressers, Artificers and Laborers, Suttlers, Followers public and private, and others attached to, or serving with, any part of the Army.(v)

Persons amenable to the Court.

(u) Sec. 1, Act XII, 1842.

(v) Sec. 7, Art. 157, Act XIX, 1847. Sec. 2, Act XII, 1842.

MILITARY OFFICER IN CHARGE OF THE POLICE.

Civil suits under 20 Rupees to be tried by Officer in charge of Police.

1. At all Military Bazar Stations suits for the recovery of any debt not exceeding 20 Rupees in which the Defendant at the time the cause of action arose, as well as at the period of the institution of the suit, was a native Non-Commissioned Officer or Soldier, or belonged to any of the Military classes subject to the Articles of War for the Native Army, should be brought before the Officer Commanding, who by a written Order should refer them to the Officer in immediate charge of the Police for investigation and decision.(*w*)

Plaintiff must be a registered Military Bazar man.

2. No person residing within the limits of any Military Cantonment or carrying on any trade or business therein can be allowed to recover in the Court of the Officer in charge of the Police any debt contracted in the way of trade, or for the loan of money, within any such Cantonment, by any person subject to the jurisdiction of such Court, unless the person seeking to recover the debt was, at the time of contracting thereof, registered as a Military Bazar-man within such Cantonment.(*x*)

Affirmation to be made by Officer in charge of Police.

3. The Officer in immediate charge of the Police previously to acting under the authority aforesaid should make and subscribe a solemn declaration according to the form E. in the Appendix to Regulation VII of 1832, before the Commanding Officer, who is authorized to receive the same.(*y*)

An Officer may be appointed to act with similar powers, for the Officer in charge of Police.

4. During the temporary absence of the Officer in immediate charge of the Police, such other Military Officer as may be nominated by the Commanding Officer of the station should exercise the duties hereunder assigned to Officers in charge of the said Police.(*z*)

He also should make affirmation.

5. The person so nominated previously to entering on the duties of his Office should make and subscribe a solemn

(*w*) Cl. 3, Sec. 21, Reg. VII. 1832.
(*x*) Act XIV, 1855.
(*y*) Cl. 4, Sec. 21, Reg. VII, 1832.
(*z*) Cl. 1, Sec. 37, Ibid.

affirmation similar to that mentioned in para 3, before the Commanding Officer.(a)

6. Officers in immediate charge of the Police have power to summon any person resident within Military limits, as a witness before themselves, or before Punchayets assembled by them; provided always, that no woman be summoned, whose rank or caste may render it improper to require her attendance. When the evidence of such a woman may be required, the Officer in immediate charge of the Police must require her to furnish her deposition in writing duly attested, and the deponent must state in her deposition that she is prepared to make solemn affirmation to the truth of it, if required.(b)

Summons against witnesses within Military limits;

7. When Officers in charge of the Police may require the attendance of witnesses residing without Military limits, the summons should be sent to the principal Native Officer of the village in which the witness resides, to be served by him, unless there be a European Civil Officer in the Magistracy on the spot, in which case it should be sent to him to be served; if the witness reside more than four miles beyond such limits the Officer Commanding should send the summons to the nearest European Civil Officer in the Magistracy, with a letter in the following form:

and without.

SIR,

I have the honor to transmit to you the enclosed summons, which I request that you will countersign and cause to be duly served and returned to me, endorsed by the party summoned, with his acknowledgment.

I am, &c.

The Civil Magisterial Officer should immediately countersign the summons, and cause it to be served, endorsed and returned accordingly.(c)

8. Witnesses resident beyond Military limits attending to give evidence before Officers in charge of the Police are entitled to receive batta at the rate of not less than one, or more than four annas per day; the rate to be fixed by

Batta, to be paid to witnesses in certain cases.

(a) Cl. 2, Sec. 37, Reg. VII, 1832.
(b) Cl. 1, Sec. 8, Ibid.
(c) Cl. 2, Ibid.

the said Officer with reference to the rank and circumstances of each witness. The batta should be paid daily or otherwise, as it may be applied for; and in all Civil Suits the sum so paid should invariably be recovered as the costs due from the parties; the party cast paying the same in the proportion which the sum decreed against him may bear to the sum sued for.(*d*)

Witnesses not attending or refusing to testify or to sign their deposition may be fined, and imprisoned.

9. Any witness summoned by an Officer in charge of the Police, who neglects to attend, or refuses to give his testimony, or to sign or mark his deposition, if required, is liable to be fined by the said Officer in a sum not exceeding 200 Rs., provided always that in the event of such circumstance occurring before a Punchayet assembled by an Officer in charge of the Police, a written communication thereof should be made by them to the Officer in charge of the Police. In addition to the payment of the fine, the said witness, when forthcoming, may, by order of the Commanding Officer, be committed to close custody, until he consents to give his evidence, and, if required, to sign or mark his deposition.(*e*)

What proceedings to be held, if fine be not paid.

10. If the fine be not paid forthwith, the amount thereof should be levied by seizure and public sale of such goods of the offender as may be found within the Military limits, or if sufficient property be not found within those limits, an application should be made by the Commanding Officer, to the Subordinate Judge or Principal Sudr Ameen within whose jurisdiction his property may be situated, according to the following form:

SIR,

A. B. inhabitant of C. D. (caste, profession &c. to be specified,) having been fined under Section 11, Regulation VII of 1832, in the amount of ——— Rupees, and not having paid the fine and there being no property belonging to the said A. B. within the limits of this Station, (or, such property as has been found belonging to the said A. B. within the limits of this Station having been sold and produced the sum of ——— Rupees only,) I have the honor to request that the fine abovementioned, (or the residue un-

(*d*) Sec. 10, Reg. VII, 1832.

(*e*) Cl. 1, Sec. 11, Ibid.

paid of the fine abovementioned) may be realized from any property or effects of the said A. B. within your jurisdiction, and the amount remitted to me.

I am, &c.(*f*)

11. The Subordinate Judge or Principal Sudr Ameen should levy the amount specified in such application from any property belonging to the offender, which may be found within the jurisdiction of his Court, and communicate the result of his proceedings, remitting the amount levied, to the Commanding Officer.(*g*)

Punishment for perjury.

12. Whatever person having made a solemn affirmation before an Officer in charge of the Police may wilfully and deliberately depose falsely, touching any point material to the issue of the cause pending, such person, if subject to the Rules and Articles of War for the government of the Native Army under this Presidency, should be dealt with according to those Rules and Articles, and if not subject to the same, should be sent by the Commanding Officer, as provided in Section 34, (*Vide page* 129) to the nearest Subordinate Criminal Court, together with the original deposition on which the perjury is assigned, duly signed and certified, and the witnesses who can prove the fact which falsifies the deposition, and also the witnesses who can prove the wilful and deliberate giving of the deposition. The Judge presiding in such Subordinate Criminal Court should dispose of the case under Section 9, Regulation X of 1816. On conviction before the Session Court, such person is liable to the punishment provided for perjury by Clause 1, Section 3, Regulation VI of 1811.(*h*)

Stamps not requisite.

13. Officers in charge of the Police cannot refuse to receive any document whatever on account of its not being written on stamped paper.(*i*)

Execution of Decree.

14. Decisions in Civil Suits passed by Officers in charge of the Police, should, on the application of the party in whose favor the judgment may be given, be carried into execution, by the said Officer, under the orders of the Commanding Officer.(*j*)

(*f*) Cl. 2, Sec. 11, Reg. VII, 1832.
(*g*) Cl. 3, Ibid.
(*h*) Sec. 12, Ibid.
(*i*) Sec. 31, Ibid.
(*j*) *Vide page* 128.

Punchayets may be assembled by Officers in charge of Police for decision of Civil suits.

15. Officers in charge of the Police are authorized to summon Punchayets for decision of suits for sums of money, or other personal property without limitation as to amount or value, provided the Defendant in the suit was a Native Officer or Soldier, or belonged to one of the other Military classes mentioned in para 1 at the period when the cause of the action arose, as well as at the institution of the suit, and provided both parties consent in writing to that mode of decision.(*k*)

Nuisances and encroachments may be ordered to be removed by Officer Commanding.

16. Officers Commanding at Military Bazar Stations are vested, within the limits of their authority, with power to remove nuisances and to prevent all encroachments upon the streets of the Bazars and Pettahs within their jurisdiction, by houses, pandals and other buildings.(*l*)

Exception.

17. But Commanding Officers are not authorized to dispossess Proprietors of land or of houses situated within the limits of any Military Bazar station, provided always that the occupation of ground which, in case of dispute, the Civil Courts have settled to be exclusively the property of Government, when once allotted to Bazars, be subject to all the Regulations established by General Orders of Government.(*m*)

Beyond the Frontier, certain suits cognizable by Officers in charge of Military Bazars.

18. At all Stations beyond the Frontier and in all Detachments in the Field beyond the Frontier, the Officer in charge of the General Camp or Field Detachment Bazar, respectively, is authorized to investigate, decide and determine all suits for the recovery of any debt not exceeding 20 Rupees, provided the Defendant, at the time the cause of action arose as well as at the period of the institution of the suit, was of the description specified in para 1. The said Officers, previously to exercising these functions, should make and subscribe a solemn declaration, similar to that mentioned in para 3, before the Officer Commanding who is authorized to receive the same.(*n*)

Beyond the Frontier, what suits may be referred to Punchayet.

19. In Civil Suits to any amount or value, not cognizable under the preceding para, nor by Military Courts of Requests under Act XI of 1841, nor by any of the Civil Courts under this Government, wherein the Defendant at the time the cause of action arose, was a Native Officer or Soldier, or of any

(*k*) Sec. 24, Reg. VII, 1832.
(*l*) Cl. 1, Sec. 35, Ibid.
(*m*) Cl. 2, Ibid.
(*n*) Sec. 41, Ibid.

of the other Military Classes subject to the Articles of War for the Native Army, and at the time of the institution of such suit continued so to be, at any Station beyond the Frontier or with any Detachment in the Field beyond the Frontier; it is competent to the Officer Commanding such Field Station or Detachment, by mutual consent of the parties to refer the same for decision to a Native Punchayet, consisting of five persons, of whom each party should nominate two members, and the Commanding Officer the fifth.(*o*)

Regulation VII. 1832 may be extended by Government to Officers commanding at other than Military Bazar stations.

20. It is competent to the Governor in Council at any time, by an order in Council, communicated to the Civil Authorities and published in General Orders to the Army, to declare all or any part of Regulation VII of 1832, which may now specially apply to Commanding Officers at Military Bazar stations only, to be applicable to Commanding Officers at any other Military Stations, besides Military Bazar Stations. The limits of such jurisdiction should however previously be defined by the Government, and plans thereof deposited with the Magistrate of the District, and where there may be no Commissariat Officer on the spot, a Military Officer should be appointed by the Government to take immediate charge of the Police under the said Regulation, subject to the orders of the Officer Commanding the Station, and to exercise all or such part of the powers vested by that Regulation in the Officer in immediate charge of the Police, as the Government in each case may specially delegate to him.(*p*)

(*o*) Cl. 1, Sec. 42, Reg. VII, 1832. | (*p*) Sec. 38, Ibid.

MINISTERIAL OFFICERS.

1. The appointment and removal of the Ministerial Officers of the Courts (under which designation are comprehended all Native Officers attached to the Courts) (*q*) are subject to such rules and orders as the Governor in Council may, from time to time, see fit to issue (*r*)

Appointment of servants of Zillah, Sudr Ameens' and District Moonsiffs' Courts,

2. According to present rules, the appointment and removal of the Ministerial Officers of the Zillah, Sudr Ameens' and District Moonsiffs' Courts, rest with the Zillah Judge.(*s*)

of Subordinate Judges' Courts;

3. Subordinate Judges appoint the Subordinates of their own Courts.

of Principal Sudr Ameens' Courts.

4. Principal Sudr Ameens cannot entertain, suspend or dismiss any Ministerial Officer on the Establishment of their Courts, without previously submitting for the approval and sanction of the Zillah Judge a statement of the grounds on which they may propose to found either of those measures.(*t*)

A Gomastah acquainted with Persian and Hindoostanee to be appointed to Zillah and Subordinate Zillah Courts.

5. Among the Gomastahs entertained for the Zillah Court a person acquainted with the Persian and Hindoostanee languages should be employed, and the Zillah Judge should use his discretion in respect of nominating an Officer so qualified to the Subordinate Zillah Courts.(*u*)

6. Public Servants should not be entertained too late in life.(*v*)

7. Parties should not be borne on the Establishment of any Court in other than their real names, or in different names.(*w*)

(*q*) Cl. 1, Sec. 12, Reg. XII, 1802.
(*r*) Cl. 1, Sec. 3, Reg. VII, 1822.
(*s*) S. U. Pro. 21st Aug. 1843.
S. U. Dy. 31st Aug. 1843.
S. U. Pro. 14th Nov. 1843.
(*t*) S. U. Dy. 10th Dec. 1846.
(*u*) S. U. Pro. 21st Aug. 1843.
(*v*) S. U. Dy. 14th April 1846.
(*w*) Ibid, 8th February 1845.

Leave to Ministerial Officers.

8. Heads of Departments may grant leave of absence to their Ministerial servants without reference to higher authority;(x) but under the general control vested in the Zillah Judge over the establishments of Sudr Ameens and District Moonsiffs' Courts, those Officers should obtain the sanction of the Zillah Judge to the grant of this indulgence to any of their subordinates.(y)

Solemn Affirmation to be made before entering upon duties.

9. The Sheristadars or other Head Native Officers, Moonshees, Mohurrers and Nazirs of the Sudr Adawlut and the Zillah and Subordinate Zillah Courts should, previously to entering upon the execution of their respective offices, make and subscribe a solemn affirmation in open Court, before the Judge or Judges of the Court to which they may be attached, according to the form prescribed by Section 4, Regulation XII of 1802.(z)

Duties to be performed.

10. The Ministerial Officers of a Court are to translate and transcribe papers, to arrange and keep the records, and to assist the Judge in executing the acts of the Court; these duties being performed in such manner and conformably to such rules as the Judge may prescribe. They are not to interfere in any other manner than as abovementioned, publicly or privately, in any cause or matter depending before the Court, or which may have been, or shall be intended to be, brought before it.(a)

11. It is the duty of the Translators of the Court of Sudr Adawlut to select for immediate disposal such of the motions and applications for the admission of Special Appeals as may be accompanied with an English translation, to compare the translation carefully with the original, to make such corrections as may appear necessary, and then to certify, at the foot of the translation, that it has been so compared and that the translation is true and correct.(b)

Amenability to the Courts for corruption &c.

12. The Ministerial Officers of the Courts are amenable to the Courts to which they may be respectively attached for acts of corruption or extortion; and the Courts are empowered to receive any such charges that may be preferred against them. Previously however to receiving the charge, the Courts are to require the complainant to make oath or solemn affirmation to

Complainant to make affirma-

(x) S. U. Dy. 15th Dec. 1846.
(y) Ibid. 31st August 1843.
S. U. Pro. 14th Nov. 1843.
(z) Sec. 4, Reg. XII, 1802.
(a) Sec. 5 and 11, Ibid.
(b) S. U. Pro. 30th June 1847.

tion, and give security.

the truth of it, and give security in whatever sum they may judge proper, to prosecute the charge without delay. Unless the complainant does previously take the oath, or subscribe the abovementioned affirmation, and give the required security, the Courts are not to receive the charge.(c)

Sudr Court may receive charges against servants of Zillah Courts, not relating to matters before Sudr Court.

13. The Sudr Adawlut is empowered to receive any charge of corruption or extortion, not relating to any suit or matter depending before, or decided by it, that may be preferred to it against any Ministerial Officer of a Zillah Court; and to refer such charge to the Court to which the accused may be attached, by a Precept under the seal of the Court, attested by the Register, provided the complainant proves satisfactorily, that he preferred the charge in the first instance to such Court; and offered to make the oath or affirmation, and to give the security mentioned in the above para, and that the Court, notwithstanding, omitted or refused to receive the charge; and provided moreover that he makes the required oath or affirmation, and enters into the prescribed security.(d)

Procedure, if charge relate to any matter before Sudr Court.

14. But if any person should prefer a charge of corruption or extortion, against any Ministerial Officer of a Zillah Court, to the Sudr Adawlut, in any appeal or matter which may be depending, or has been decided, in the last mentioned Court, the Court may receive the charge, and refer it to such Zillah Court, without further inquiry; provided the complainant previously makes the oath or affirmation, and gives the security abovmentioned.(e)

Sudr Court may receive charges against servants of Subordinate Zillah Courts not relating to matters before Sudr Court.

15. The Sudr Adawlut is also empowered to receive charges of corruption or extortion, not relating to any matter depending before, or decided by it, that may be preferred to it against any Ministerial Officer of a Subordinate Zillah Court, and to order such Court, by a Precept under its seal, attested by the Register, to receive the charge; provided the complainant satisfactorily proves that he preferred the charge in the first instance to such Subordinate Court, and offered to make the required oath or affirmation, and give the required security, and that the Court, notwithstanding, omitted, or refused to receive the charge; and provided also, that the complainant further proves satisfactorily that in consequence of such refusal he preferred the charge to the

(c) Cl. 1, Sec. 12, Reg. XII, 1802.
(d) Cl. 2. Ibid.
(e) Cl. 2, Ibid.

Zillah Court, and offered to make the said oath or affirmation, and give the said security, and that the Zillah Court nevertheless omitted, or refused to receive the charge; and provided moreover that he makes the required oath or affirmation, and enters into the prescribed security.(*f*)

16. The Sudr Adawlut is further empowered to receive a charge of corruption or extortion, against a Ministerial Officer of a Subordinate Zillah Court, that may have been preferred in the first instance to the Zillah Court, in any appeal or matter depending before, or which may have been decided by it, and to refer the charge to such Zillah Court, or to the Subordinate Court to which the accused may be attached; provided the complainant satisfactorily proves that he preferred the charge to the Zillah Court, and offered to make the required oath or affirmation, and give the prescribed security; and provided moreover that he makes the oath or affirmation, and enters into the security.(*g*)

Proceduge if charge relate to any matter before Sudr Court.

17. But if any person should charge a Ministerial Officer of any Subordinate Zillah Court, before the Sudr Adawlut, with corruption, or extortion, in any suit or matter that may be depending before it, or which may have been decided by it, the Sudr Court may receive the charge, and refer it for trial to the Court to which the offender may be attached, without further inquiry; provided the complainant previously makes the prescribed oath or affirmation to the truth of the charge, and gives the required security.(*h*)

How Sudr Court should act in respect to charges not proper to refer to Court to which accused is attached.

18. If the Sudr Adawlut receive a charge of corruption or extortion, against any Ministerial Officer of a Zillah Court or a Subordinate Zillah Court, and there appear to the Sudr Court, upon a consideration of the circumstances of the case, any objections to referring the charge to the Court to which the accused may be attached, the Sudr Court is empowered, according as it may judge expedient, either to try the charge itself, or, if the charge be against any Ministerial Officer of a Subordinate Zillah Court, to cause it to be tried by the Zillah Court.(*i*)

(*f*) Cl. 3, Sec. 12, Reg. XII, 1802.
(*g*) Cl. 3, Ibid.
(*h*) Cl. 3, Ibid.
(*i*) Cl. 5, Ibid.

Zillah Courts can receive charges against servants of Subordinate Courts.

19. The Zillah Courts are empowered to receive any charge of corruption, not relating to any suit, or matter depending before, or decided by them, that may be preferred to them against any of the Ministerial Officers of the Subordinate Courts within their respective jurisdictions, and to refer the charge to such Subordinate Court; provided it be proved, to their satisfaction, that the accuser preferred the charge, in the first instance, to the Subordinate Court, and offered to make the oath or affirmation, and give the security aforesaid, and that the Court, notwithstanding, omitted or refused to receive the charge.(*j*)

20. But if any person should charge a Ministerial Officer of a Subordinate Court, with corruption, or extortion in any appeal, or matter which may be depending, or has been decided in the Zillah Court, such Zillah Court may receive the charge, and refer it to the Subordinate Court, without further inquiry; provided the complainant previously makes the prescribed oath or affirmation and gives the prescribed security.(*k*)

How Zillah Court should act in respect to charges not proper to be referred to Court to which accused is attached.

21. If a Zillah Court receive a charge of corruption or extortion against any Ministerial Officer of a Subordinate Court, and there appear to the Court, upon a consideration of the circumstances of the case, any objections to referring the charge to the Court to which the accused may be attached, the Zillah Court should report the grounds of such objections to the Sudr Adawlut, which Court may cause the charge to be tried by such Zillah or Subordinate Court, according as it may deem expedient.(*l*)

Charges of corruption or extortion to be considered as civil actions.

22. Charges of corruption or extortion that may be preferred against the Ministerial Officers of any Civil or Criminal Court of Judicature, are to be considered as Civil actions, and, accordingly, are to be prosecuted in the Civil Courts. Conformably to this rule, whenever the Sudr Adawlut, or the Foujdaree Adawlut, may receive any such charge against their own Officers, or exercise the powers mentioned in para 18, they are to direct the complainant to prosecute the charge in the Sudr Adawlut; and whenever the Zillah Courts may receive any such charge against any of their own Ministerial Officers, or the Officers of any Subordinate Court, or in the event of

(*j*) Cl. 4, Sec. 12, Reg. XII, 1802.
(*k*) Cl. 4, Ibid.
(*l*) Cl. 6, Ibid.

any such charge being referred to them, they are to direct the complainant to prosecute the charge before the Zillah Court; and whenever the Subordinate Zillah Courts may receive any such charge against their Ministerial Officers, or any such charge may be referred to them by the Sudr Adawlut, or the Zillah Court, they are to direct the complainant to prosecute the charge in the Subordinate Zillah Court.(*m*)

What judgment should be passed if such charge be proved,

23. If a Ministerial Officer of any Civil or Criminal Court, who may be so prosecuted for corruption or extortion, be proved to have received, or taken, the whole, or any part of the money or property, which he may be charged with having received or taken, the Court is to adjudge him to refund the amount or value of the money or property, which he may be proved to have so received or taken, and to pay a fine of three times the amount of it to Government. In enforcing the decision, the Court is to observe the rules prescribed for enforcing other decisions of the Court. The Court may suspend a Native Officer, against whom a charge of corruption or extortion may be preferred, until the final decision may be passed, if it see cause for so doing.(*n*)

and how executed.

Prosecution for damages if charge be not proved.

24. If any person prefer a charge of corruption or extortion against a Ministerial Officer of any Civil or Criminal Court of Judicature, and the charge be not proved, the accused may sue the accuser for damages, in any Court of Civil Judicature, to which he may be amenable.(*o*)

Punishment for persons not attached to Courts, convicted of corruption or extortion.

25. If a Native Servant, or dependant, of any Judge of a Civil or Criminal Court of Judicature, not being a Public Officer attached to the Court, extort, or receive directly or indirectly, any money or other valuable consideration, under any pretence whatever, from any party or person, on account of any suit to be instituted, or that may be depending, or has been decided, in the Court, he should be committed as for a contempt of Court, and be punished by a fine equal to treble the sum of money extorted or received, or by imprisonment, or corporal punishment, at the discretion of the Court; and the Judge is required to discharge such servant or depen-

(*m*) Cl. 7, Sec. 12, Reg. XII, 1802.
(*n*) Cl. 8, Ibid.
(*o*) Cl. 12, Ibid.

dent, and never to employ him, directly or indirectly, in his public or private capacity. If the offender do not appeal against the Decree within the limited time, or if an appeal do not lie from the decision, or if the decision be confirmed in appeal, the Court, by which the final Decree may be passed, should transmit a copy of it to the Government, and the offender, in addition to the penalties or punishments specified in the Decree, is further liable to be declared by the Government incapable of serving it in any capacity whatever.(p)

Fine.

26. The several Judicial Authorities in the Provinces are prohibited from imposing a fine exceeding 10 Rupees, upon any servant on their Establishment without the special sanction of the Sudr Adawlut. In cases however where the sum of 10 Rupees may exceed the moiety of the individual's salary, it is not competent to the Judge to impose a fine exceeding half a month's pay, without the special sanction of the Sudr Court (q)

Dismissal.

27. When persons are appointed to permanent situations in any Court they should not be dismissed upon light grounds. Fraud and dishonesty, continued and wilful negligence, and all offences involving moral disgrace meet with their appropriate punishment in dismissal, and in every case in which that punishment is inflicted upon just grounds, the individual should be considered to be permanently excluded from Government employ;(r) as it would be most injurious to the Service that men who have been dismissed from one Department should be considered eligible for employment in any other.(s)

28. There are however two classes of cases which do not come within the intention of the above rule, viz. cases of inaptitude for the particular branch of occupation to which a Native servant may have been originally appointed, and cases of physical incapacity. The latter must be treated according to rule; and with regard to the former, the difficulty might, in the majority of cases, be overcome by a re-adjustment of duties, without recourse to the harsh step of removal from Office.(t)

29. Zillah Judges should forward Annual Returns to the Sudr Adawlut of all servants dismissed within their jurisdiction,

(p) Sec. 14, Reg. XII, 1802.
(q) C. O. 6th December 1836, No. 38,
(r) E. M. C. 18th November 1851.
(s) S. U. Pro. 30th November 1850.
(t) E. M. C. 18th November 1851.

whose pay exceeds 10 Rupees. These Returns should be transmitted by the Sudr Court to the Government.(u)

Appeal.

30. An Appeal lies to the Zillah Judge from all orders passed by the lower Courts dismissing or suspending their ministerial servants. The order of the Zillah Judge upon such appeals is appealable to the Sudr Adawlut.(v)

31. The Court of Sudr Adawlut exercises a general control over the lower Courts in preventing the appointment of improper and unfit persons, and the unjust and capricious removal of those employed in the Judicial Department.(w)

32. In other Deparments, the absolute power of dismissal rests with the Head of the Office, and in *all*, the Government reserve and exercise the power of interference, when necessary.(x)

Temporary Establishments.

33. On all occasions when the period allowed for the employment of temporary Establishments is not specially stated at the time of sanction, such sanction must be considered to extend to six months only, at the expiration of which period, if the Establishment be still required, the case must be again submitted for the orders of Government; and if sanction be not renewed, the Establishment will be disallowed by the Audit Office.(y)

Ministerial Officers cannot purchase property sold by a Court.

34. No person on the Establishment of a Court in the Provinces can become the purchaser of lands, or property of any kind, sold by public sale at the instance of the Court to which he is attached, or at that of any other tribunal subject to its control. Any such person who may so purchase, either in his own name or in the name of another, land or other property situated within the jurisdiction of the Court to which he is attached, and sold under the circumstances abovementioned, is liable to be dismissed from the public service. It is not however intended by this rule to prohibit such Officers from purchasing or holding by private bargain, lands, wherever situated, not being liable, at the time of purchase, to public sale under the process of a Court.(z)

Penalty for so doing.

(u) E. M. C. 18th November 1851.
(v) Vide. *p.p.* 26 and 50.
(w) C. O. 11th March 1830.
E. M. C. 18th November 1851.
(x) E. M. C. 18th November 1851.
(y) F. S. G. G. 28th July 1835.
(z) C. O. 7th April 1838, No. 51.

Rules relative to the acquisition of landed property by Public servants.

35. But no Principal Sudr Ameen, Sudr Ameen, District Moonsiff, Sheristadar, Nazir, nor any Ministerial Servant on the Establishment of a Court, can acquire by private purchase, bargain, mortgage, transfer, or by any means, directly or indirectly, any landed property within the District in which he may be employed, until he first communicates in writing, in the case of a Principal Sudr Ameen, Sudr Ameen, District Moonsiff, or a Ministerial Officer on the Establishment of a Sudr Ameen or a District Moonsiff, to the Zillah Judge; and in the case of a Sheristadar, or Nazir or other Ministerial Officer of the Zillah or Subordinate Zillah Court to his immediate superior, (viz. the Officer presiding over the Court in which he is employed,) all particulars connected with such landed property, or interest in such landed property, and with the proposed mode of acquiring it, and until he obtains the sanction of the Zillah Judge or his immediate superior, in writing, for the acquisition.

36. Where the Zillah Judge, or immediate superior, may entertain no doubt in regard to the propriety of deciding on the application so made to him, he may, at his discretion, grant, or withhold, his assent to it. In cases which seem to him to be doubtful, he must submit the matter to the Court of Sudr Adawlut for their orders.

37. Where any of the Officers above designated may become possessed of land, or of an interest in land by inheritance, or as a member of a family, he must, immediately upon such property devolving upon him, communicate in writing all particulars respecting it to the Zillah Judge or his immediate superior for registry.

38. In like manner, when a party holding lands or having any interest in land, may be appointed to either of the Offices abovementioned, he should, upon such appointment, notify in writing to the Zillah Judge (or his immediate superior, as the case may be) for registry, all particulars connected with the lands which he may possess, or in which he may have an interest.

39. Zillah Judges, Subordinate Judges, and Principal Sudr Ameens, should keep a Register, according to the following form, of all lands referred to in the preceding three paras, viz: of such as may have been acquired with their permission—of such

as may have belonged to Officers of the above grades at the time when they entered the service of Government—and of such as may have devolved upon them after their engaging in it:

FORM.

Register of lands within the Zillah of ——— held by Principal Sudr Ameens, Sudr Ameens, District Moonsiffs, Sheristadars, Nazirs and other Ministerial Servants, and acquired by them prior or subsequent to their entering into the service of Government.

Name of Officer.	Office.	Land acquired.		When acquired, and whether prior or subsequent to employment in the Public Service.	By what means acquired.	Nature of interest by such Officer in such landed property.	REMARKS.
		Extent.	Assessment.				
1	2	3	4	5	6	7	8

40. In submitting to the Court of Sudr Adawlut the Annual Civil Report, each Zillah Judge, Subordinate Judge, and Principal Sudr Ameen, should append to it an extract from the above Register, showing the entries made in it during the year under review. He should also certify at the foot of the extract, that the rules prohibiting the acquisition of landed property by the Officers above named without permission, have been duly enforced.

41. Officers of the above grades, who, under these rules may be permitted to acquire or retain lands, or interest in lands, cannot, under any circumstances, take a direct part in the cultivation of such lands.(a)

(a) C. O. 4th January 1850, No. 116 A.

PLEADERS.

Who are eligible for the Office.

Certificate requisite.

1. The Office of Pleader or Vakeel in the Courts of the East India Company is open to all persons, of whatever nation or religion; but no person can be admitted as a Pleader unless he obtains a certificate in such manner as may be directed by the Sudr Court, that he is of good character and duly qualified for the Office.*(b)

Barristers and Attorneys of H. M.'s Supreme Court may plead without Certificate.

2. A Barrister or Attorney of any of Her Majesty's Supreme Courts of Judicature in India is however entitled as such (without obtaining the certificate above mentioned) to plead in any of the Courts of the East India Company, subject to all the rules in force in those Courts applicable to Pleaders therein, whether relating to the language in which the Court should be addressed or to any other matter connected with pleading.(c)

Power of Sudr Adawlut and Zillah Courts to appoint Pleaders.

3. The Sudr Adawlut and the several Zillah Courts are empowered to appoint to the Office of Pleader in their respective Courts, such a number of persons duly qualified for the situation, as may from time to time appear to them to be necessary.(d)

Sunnud.

4. Persons appointed to the office of Pleader in the Zillah Courts or in the Sudr Adawlut should receive a Sunnud of appointment duly authenticated by the Court to which they may be respectively attached. This Sunnud, which is not required to be on stamped paper, should be drawn up according to the form No. 1 in the Appendix to Reg. XIV of 1816.(e)

Zillah Court Pleaders may practice in lower Courts.

5. The Zillah Judge may, at his discretion, authorize the Pleaders attached to his Court to practice in the Subordinate Zillah and the Sudr Ameens' Courts.(f)

Zillah Judge to appoint Pleaders to Moonsiffs' Courts.

6. The Zillah Judge should receive applications from individuals desirous of being employed as Pleaders in the Courts

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* NOTE.—*For rules relative to the examination &c. of candidates for the Office of Pleader, see page* [illegible]

(b) Sec. 4, Act. I, 1846.

(c) Sec. 5, Ibid.
Sec. 3 and 4, Act. XX, 1853.

(d) Cl. 1 Sec. 3, Reg. XIV, 1816.
Sec. 2, Act. XXVII, 1836.

(e) Cl. 1 Sec. 4, Reg. XIV, 1816.

(f) S. U. Pro. 21st August 1843.

of the District Moonsiffs within his jurisdiction, regarding whom he should make all necessary inquiry, and having examined them should appoint them, if satisfied of their eligibility, to the Courts of those Moonsiffs to which he may consider it advisable they should be attached. The Zillah Judge's inquiries should embrace the knowledge of languages possessed by the Candidates, their age and personal character, the experience they have of the practice of the Courts, and their knowledge of the Civil Code. The Candidates should also undergo an examination in Hindoo Law before a Law Officer at the nearest station, or before the Pundits of the Sudr Adawlut.(*g*)

Solemn declaration.

7. Every Pleader, previously to being allowed to practise, should make and subscribe before the Court to which he may be appointed a solemn declaration, according to the form No. 2 of the Appendix to Regulation XIV of 1816.(*h*)

Vakalutnamah.

8. When a party in a cause may be desirous of retaining a Pleader for the prosecution or defence of any cause, he should execute to him a Vakalutnamah constituting him Pleader in the cause and authorizing him to prosecute or defend it, and further binding himself to abide by, and to confirm, all acts which such Pleader may do, or undertake, in his behalf in the cause, in the same manner as if such party had been personally present and consenting. The party should attest the instrument with his seal or signature, or with his mark if he cannot write, in the presence of two credible witnesses, who should likewise attest it in the same manner, and who should attend the Court and prove the Vakalutnamah in all cases in which it may be judged requisite.(*i*)

It need not be verified on oath.

9. Vakalutnamahs, whether executed by Principals, or their Attorneys and Agents, and Mooktyarnamahs under the authority of which Vakalutnamahs are executed, are not required to be verified on oath. The responsibility in regard to all such documents being properly and correctly executed resting entirely with the Pleaders, it is optional with them to act upon Vakalutnamahs not duly executed.(*j*)

10. A Vakalutnamah signed in the general name of a trading Firm, and not in the names of the several Partners, nor by one

(*g*) S. U. Dy. 5th June 1846.
(*h*) Sec. 5, Reg. XIV, 1816.
(*i*) Cl. 1 Sec. 21, Ibid.
(*j*) C. O. 15th March 1845. No. 94, A.

Partner for himself and the others, cannot be considered to be duly executed.(*k*)

It must be on stamped paper.

11. Vakalutnamahs should be written on the stamped paper prescribed by Sec. 20, Regulation XIII of 1816; but they are not liable to the stamp duty on Exhibits.(*l*)

Exception.

12. Vakalutnamahs in suits before District Moonsiffs are not required to be on stamped paper.(*m*)

How Pleader should endorse Vakalutnamah.

13. When a Pleader, to whom a Vakalutnamah may have been executed, may consent to undertake the prosecution or defence of the suit, he should, under the word "Accepted" which is to be endorsed on the Vakalutnamah, affix his signature, together with the date on which he does so; and he is thenceforward precluded from being employed *against* the party who may have so retained him, either in the same or in any other suit in which the cause of action or matter in dispute may be the same;(*n*) even should the Vakalutnamah be withdrawn from him before the Pleadings have been filed.(*o*)

He cannot afterwards be employed against the party who retained him.

Fees.

14. Parties employing authorized Pleaders are at liberty to settle with them by private agreement the remuneration for their professional services, and such agreement need not be specified in the Vakalutnamah; but when costs are awarded to a party in a regular suit, Original or Appeal, decided on the merits, against another party, the amount payable on account of fees of Pleaders should be calculated according to the scale contained in Section 25, Regulation XIV of 1816; and when costs are awarded in other cases, the amount payable on account of such fees should be one-fourth of what it would have been in a regular suit decided on its merits.(*p*)

Conditional agreements illegal.

15. Conditional agreements between Pleaders and their clients in regard to the remuneration for the professional services of the former are illegal. It could not have been the intention of the Legislature that the agreements referred to in the above para should have reference to other than a fixed payment, altogether irrespective of the result of the cause; for to suppose that any

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(*k*) S. U. Pro. 23d Dec. 1854.
(*l*) Cl. 2, Sec. 21, Reg. XIV, 1816.
(*m*) Sec. 39, Reg. VI, 1816.
(*n*) Sec. 22, Reg. XIV, 1816.
C. C. 5th November 1829. A.
S. U. Pro. 24th July 1851.
(*o*) S. U. Pro. 13th September 1827.
(*p*) Sec. 7, Act 1, 1846.
Vide page 100.

other course was contemplated, would involve the recognition of a practice tolerated in no other Courts, and which, in the inducements it would hold out to false and vexatious litigation, and the temptations to dishonesty it would afford to the Pleaders by giving them an undue interest in the result of the causes in which they might be engaged, would prove most injurious to the administration of justice.(q)

16. In every case therefore in which a Pleader is employed, he must certify on the back of his Vakalutnamah that no agreement has been entered into by him with his client in contravention of Circular Order No. 129.(r)

Private agreements for fees to be enforced by regular suit.

17. Private agreements between parties and their Pleaders respecting the remuneration to be paid for the professional services of the latter cannot be enforced otherwise than by a regular suit.(s) The Courts cannot summarily interfere in such matters.(t)

18. The absence of a Vakalutnamah disentitles a Pleader to claim fees.(u)

Receipt for fees.

19. For every sum paid to a Pleader by a Court on account of his fees, such Pleader should give a receipt written on the stamped paper prescribed by Section 11, Regulation XIII of 1816.(v)

A party may retain two or more Pleaders,

20. The parties in a suit are respectively permitted to entertain two or more Pleaders.(w)

upon one Vakalutnamah.

21. In such cases, it will be sufficient for the party employing two or more Pleaders in the same suit, to file a single Vakalutnamah, which should be endorsed by all the Pleaders in the manner described in paras 13 and 16.(x)

22. When a party, after having executed a Vakalutnamah to one or more Pleaders, may entertain one or more additional Pleaders without withdrawing the management of his cause from the Pleader or Pleaders first retained, he must execute a fresh Vakalutnamah, empowering all the Pleaders retained, jointly to act in

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(q) C. O. 11th August 1853, No. 129.
(r) Ibid.
(s) Sec. 8, Act I, 1846.
(t) S. U. Pro. 19th November 1849.
(u) D. S. U. S. A. 12 of 1852.
(v) Cl. 3, Sec. 25, Reg. XIV, 1816.
(w) Cl. 1, Sec. 30, Ibid.
(x) Cl. 2, Ibid.
S. U. Pro. 24th July 1851.

his behalf, and the Vakalutnamah must be endorsed by all the Pleaders named therein in the manner abovementioned.(y)

Parties may withdraw management of suits from their Pleaders, and appoint new Pleaders.

23. A party dissatisfied with the conduct of his Pleader, may, at any stage of the trial previously to the decision, withdraw the power delegated to such Pleader, and appoint another to plead the cause, without assigning any reasons for so doing. In such cases the party should present a petition to the Court, notifying that he has withdrawn the management of the suit from such Pleader, and should file a new Vakalutnamah in the name of the Pleader whom he may appoint to carry on the suit. All acts however which may have been done by the first Pleader on behalf of his client, previously to his having been dismissed, are to be held valid.(z)

A party may plead himself.

24. And a party is at liberty to appear and plead his own cause in person, in any of the Courts of Civil Judicature, without employing an authorized Pleader;(a) but a party having once nominated a Pleader cannot appear in person without first cancelling the Vakalutnamah.(b)

Duties of Pleaders.

25. Pleaders should use due precautions to ascertain the real names and the identity of persons who propose to employ them.(c)

26. Pleaders should not file any Plaint, Answer, or other Pleading, without previously ascertaining that such Pleading has been duly prepared in conformity with the Regulations, that it contains no unnecessary repetitions of former Pleadings, no terms of personal abuse or reproach against the opposite party, his pleaders, witnesses, or other persons, and no groundless imputations on any Court of Justice, or Public Officer; but that it contains such matter only as is apparently material and relevant to the suit.(d)

27. Every Pleading filed by an authorized Pleader should be signed by him in testimony of his having considered and approved its contents.(e)

28. In order that the expense, trouble and inconvenience frequently experienced by filing irrelevant exhibits, and by sum-

(y) S. U. Pro. 24th July 1851.
(z) Cl. 2, Sec. 12, Reg. XIV, 1816.
(a) Sec. 38, Reg. XIV, 1816.
(b) S. U. Pro. 15th March 1821.
(c) Sec. 8, Reg. XIV, 1816.
(d) Cl. 1, Sec. 9, Ibid.
(e) Ibid.

moning useless witnesses, may be avoided, Pleaders should, previously to their being filed in Court, examine the documents which their clients may propose to exhibit in proof of their claims, and ascertain from their clients, previously to summoning any witnesses, the specific points which such witnesses are expected to prove by their testimony.(*f*)

29. The Courts should carefully point out to the notice of the Pleaders such part of the pleadings as are irregular, irrelevant, or otherwise objectionable, and should record their censure of any Pleaders, whose conduct, in opposition to the preceding rules, may in any particular instance demand such animadversion; if notwithstanding such recorded censure, a Pleader should again be guilty of similar misconduct he is liable in each instance to such fine to Government, not exceeding twenty Rupees, as the Court may deem it proper to impose.(*g*)

Fine.

30. If a Pleader of any of the Courts file any Plaint or Pleading required to be written on stamped paper which may not have been prepared in conformity with Clauses 1 and 2, Section 23, Regulation XIII of 1816, the Court may impose on such Pleader any fine not exceeding three times the amount or value of the additional stamped paper which would have been required, had the Plaint or Pleading been drawn up in the mode prescribed.(*h*)

31. Pleaders should give written receipts on unstamped paper, for all accounts, writings or documents which may be delivered to them by their clients in the course of any suit or process; and if a Pleader refuse to return such accounts, documents, or writings, the Court, upon a petition being presented to it for that purpose by the owners of the papers so withheld, should cause them to be restored.(*i*)

Pleaders should give written receipts for their clients' documents.

32. The authorized Pleaders of the Sudr Adawlut, the Zillah and the Subordinate Courts, are empowered to receive fees for legal opinions, under the provisions contained in the following para.(*j*)

Fees for legal opinions.

33. Any person who may be desirous of obtaining the opinion of an authorized Pleader, regarding the legal vali-

(*f*) Cl. 2, Sec. 9, Reg. XIV, 1816.
(*g*) Cl. 3, Ibid.
(*h*) Cl. 3, Sec. 23, Reg. XIII, 1816.
S. U. P., 19th November 1849.
(*i*) Sec. 36, Reg. XIV, 1816.
(*j*) Cl. 1, Sec. 20, Ibid.

dity and sufficiency of any claim, right, or title, which he may suppose himself to possess, and on the consequent expediency of prosecuting or defending, either originally or in appeal, such supposed claim, right, or title, in the Courts of Civil Judicature, may submit a written statement of his claim under his seal, signature, or mark, to the Pleader whose opinion he may wish to obtain.(*k*) The Pleader, after an attentive consideration of the laws, regulations, usages, or precedents, which may be applicable to the case, and of the arguments and proofs which may be adduced in support of the claim, should furnish to the party, under his signature, a written declaration of his opinion, with the grounds thereof.(*l*) The party is at liberty to settle by private agreement the remuneration to be paid to the Pleader for such opinion.(*m*)

Prosecution of Pleaders.

34. The parties in a suit may prosecute their respective Pleaders, in the Civil Courts of Judicature for any damages or injury which they may have sustained from any breach of the Regulations on the part of their Pleaders, or from any fraudulent conduct, or malpractices committed by their Pleaders, regarding the suit.(*n*)

Appointment of Government Pleaders.

35. One or more of the authorized Pleaders of the Sudr Adawlut, the Zillah and the Subordinate Zillah Courts, should be appointed for the purpose of conducting the prosecution or defence of any suits in those Courts respectively, which may be directed to be carried on at the public expense by any Regulation, or by a special order from the Governor in Council or other competent authority. Those Pleaders should be furnished with a sunnud or written authority in the English language under the signature of the Secretary to Government in the Judicial Department, and the sunnud should be drawn up according to the form No. 5 of the Appendix to Regulation XIV of 1816.(*o*)

Their duties.

36. The Government Pleaders should undertake all causes which they may be directed to plead by orders from Government, or which may be directed by any Regulation to be carried on at the public expense, upon receiving an order for that purpose, either from Government or from any Officer or Officers empowered by any Regulation to superintend, and to furnish in-

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(*k*) Cl. 2, Sec. 20, Reg. XIV, 1816.
(*l*) Cl. 3, Ibid.
(*m*) Sec. 9, Act. I, 1846.
(*n*) Cl. 1, Sec. 12, Reg. XIV, 1816.
(*o*) Cl. 1, Sec. 37, Ibid.

structions for conducting such suits. The Order of Government, or of such Officer or Officers should be filed in Court as the authority of the Pleader to plead the cause, and should form part of the record of the proceedings.(p)

Rules for their guidance.

37. In pleading suits directed to be carried on at the public expense, the Government Pleaders are subject to all the rules prescribed for Pleaders pleading on behalf of private individuals, except in matters or cases in which it may be otherwise specially directed by any Regulation.(q)

They cannot advise parties opposed to Government.

38. The Government Pleaders are prohibited from giving any advice to the parties opposed to Government in any Civil suit or proceeding, and from being concerned, directly or indirectly, on their behalf, in suits which may be directed to be carried on at the public expense; but in all other suits the Government Pleaders are at liberty to plead for either of the parties, in the same manner as the other authorized Pleaders of the Courts.(r)

Their fees

39. The Government Pleaders are entitled to the same fees in causes directed to be pleaded at the public expense, as Pleaders employed in causes between individuals, and under the same rules and restrictions.(s)

Another Pleader may be associated with Government Pleader in carrying on public suits.

40. The Board of Revenue, or any other authority entrusted with the management of suits on the part of Government, is empowered to associate with the established Pleader of Government, any other authorized Pleader, in cases in which such aid may, from the importance of the suit, or any other reason, be judged necessary or advisable. Such additional Pleader should be furnished with a Vakalutnamah duly authenticated by the Officer or authority employing him, and be entitled to receive the same fees, under the same rules and restrictions as if he were employed on the part of an individual.(t)

They may practise in Subordinate Courts.

41. The Government Pleader attached to a Zillah Court may practise also in the Subordinate Zillah Court and the Court of the Sudr Ameen.(u)

(p) Cl. 3, Sec. 37, Reg. XIV, 1816.
(q) Cl. 6, Ibid.
(r) Cl. 4, Ibid.
(s) Cl. 8, Ibid.
(t) Cl. 7, Ibid.
(u) S. U. Pro. 21st August 1843.

Death or removal of a Government Pleader, as well as nomination of a successor, to be reported to Government.

42. The Sudr Adawlut and the Zillah Courts should report to the Secretary to Government in the Judicial Department, the death, resignation, or removal of any of the Government Pleaders attached to their respective Courts, and should at the same time nominate for the approbation of Government such individual as may appear best qualified for the situation, by his character and capacity; the selection being made from amongst the authorized Pleaders of the Court.(*v*)

The Collector's approval or disapproval of the nomination to be ascertained and communicated to Government.

43. But a Zillah Court, previously to nominating for the approbation of Government, the person it proposes should be appointed to the vacant office, should, in all instances, call upon the Collector of the District, to state whether he concurs in the nomination or not, and in the event of his not concurring, to explain the grounds of his objection. Should the objection urged by the Collector fail to produce any change in the views of the Court, the Court should communicate such objection to Government, and the reasons which induce the Court to deem it invalid and untenable.(*w*)

Procedure on the death, resignation, removal, or absence of a Pleader.

44. Whenever a Pleader attached to a Zillah or, Subordinate Zillah Court may die, or may be removed from his office, or may voluntarily resign his situation; or whenever the decision of suits may be materially delayed by the protracted indisposition of a Pleader, or by his continued inability to attend the Court from any other cause, the Judge of such Court should notify the same in a Publication to be affixed in his own Court, and in the Courts of the Sudr Ameens, as well as in the Office of the Collector of the District. The Publication should contain a statement of the several depending cases in which such Pleader may have been employed, and a requisition to the parties who retained him, to attend in person, or to substitute another Pleader in room of the Pleader formerly appointed, within a reasonable period, (not less than six weeks,) which should be fixed by the Court. In such cases, instead of filing a new Vakalutnamah, it will be sufficient for

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(*v*) Cl. 2, Sec. 37, Reg. XIV, 1816. | (*w*) C. O. 8th June 1838. No. 52. A

the party, or his Agent duly authorized, to endorse on the original Vakalutnamah, a written declaration that he has appointed some other Pleader of the Court in lieu of the Pleader who may have died, or resigned his office, or have been removed from his situation, or may, from indisposition or other cause, be unable to attend the Court.(x)

45. The above Publication should be held and considered to be a good and sufficient notice; and if the party do not attend, or appoint another Vakeel within the period limited in the Publication, he should be required to shew cause for the omission; and, should sufficient cause not be assigned, the Court should proceed as in case of default in conformity with the provisions in force in that respect.(y)

46. A similar Notification should be issued by the Sudr Adawlut, on the death, resignation, removal, protracted indisposition, or continued inability to attend the Court, of a Pleader attached to the Court. The Publication should be affixed in the Sadr Court, and in such of the lower Courts in which it may appear necessary to publish the same, with reference to the depending causes in which the Pleader may have been employed; and the period to be allowed for the parties to appear and substitute another Pleader should not be less than 3 months.(z)

Or in the event of his indisposition.

47. If a Pleader be unable to attend the Court in consequence of indisposition, or other sufficient reason, he should notify the same in writing to the Court on unstamped paper, and the hearing of any cause in which such Pleader may be employed should be postponed to a future day, unless the party or his authorized agent commit the management of the cause to any other Pleader of the Court, or unless the party himself be present and willing to plead the cause in person. If the management of the cause be entrusted to any other Pleader of the Court; instead of filing a new Vakalutnamah it will be sufficient for the party, or his agent duly authorized, to endorse on the back of the original Vakalutnamah, a written declaration that he has appointed some other Vakeel of the Court to conduct the cause, either permanently, or during the absence of the Pleader first appointed.(a)

(x) Cl. 1 and 4, Sec. 18, Reg. XIV, 1816.
(y) Cl. 2, Ibid.
(z) Cl. 3 and 4, Ibid.
(a) Sec. 13, Ibid.

48. No Pleader is bound to attend Court on any day fixed for the transaction of business, or to notify to the Court his inability to attend; but should he be employed in some cause or business, which according to the practice of the Court may be heard or transacted therein on that day, and fail to attend, and omit to notify in writing his inability to attend, either in consequence of indisposition or other sufficient cause, the Court may impose on such Pleader a fine, for the first offence, not exceeding the sum of 50 Rupees, and for the second offence, not exceeding 100 Rupees.(*b*)

Fine for absence.

49. If a Pleader be guilty of disrespect to the Court in open Court, the Court is empowered to impose a fine upon him not exceeding the sum of 100 Rupees.(*c*)

Orders of Zillah and Subordinate Judges fining Pleaders, final.

50. All orders imposing fines on Pleaders which may be passed by the Zillah Judges and Subordinate Judges are final, and the amount of fines should be levied by the process prescribed for the execution of Decrees.(*d*)

Such orders from lower Courts appealable to Zillah Judge.

51. Whenever a Pleader has rendered himself liable to a fine in the Court of a Principal Sudr Ameen, a Sudr Ameen, or a District Moonsiff, it is competent to such Principal Sudr Ameen, Sudr Ameen or District Moonsiff to impose such fine, provided that an appeal from all orders imposing such fines lie to the Zillah Judge, whose decisions thereon are final.(*e*)

For what acts Pleaders may be dismissed, and who may dismiss them.

52. The Sudr Adawlut and the Zillah Judges are authorized to dismiss from office, Pleaders who may be guilty of any of the acts below mentioned, or may be otherwise deemed unfit for their situation:

1st. Encouraging or promoting litigious suits, wilfully delaying the suits of their clients for their own advantage, or refusing or omitting, without sufficient cause shown to the Court, to carry on the suits of their clients after having accepted a Vakalutnamah; and for fraudulent practices, neglect or other misconduct in the discharge of their professional duty, or gross profligacy or misbehaviour in their private conduct.(*f*)

(*b*) Sec. 2, Act XX, 1853.
Cl. 1, Sec. 14, Reg. XIV, 1816.
(*c*) Cl. 2, Ibid
(*d*) Cl. 2, Sec. 15, Ibid.
(*e*) Sec. 10 and 12, Act I, 1846.
(*f*) Sec. 6, Reg XIV, 1816.

2d. Receiving and filing a Vakalutnamah from any person under a fictitious name, if, upon full inquiry into the cicumstances of the case, the Zillah Judge may deem him to be deserving of such punishment.(g)

3d. Failing a third time to attend in Court, without reporting inability to attend, on the day fixed for the transaction of business in which such defaulting Pleader may be employed.(h)

4th. Knowingly furnishing an opinion to a party, of a nature evidently calculated to promote the institution of unfounded or litigious suits, and discouraging the amicable adjustment of dubious claims.(i)

5th. Acting for the opponent of the party who may have retained him, either in the same, or in any other suit regarding the same property and resting on the same title.(j)

6th. Entering into conditional agreements with clients in contravention of C. O. No. 129.(k)

Procedure when Courts lower than the Zillah Court think a Pleader unfit for Office.

53. Whenever a Court subordinate to the Zillah Judge may be of opinion that a Pleader attached to it is unfit for the situation in consequence of being guilty of any of the acts abovementioned; or that he is otherwise disqualified for the office, such Court should report the circumstances of the case together with its own opinion upon it to the Zillah Judge, who will pass such orders as may appear proper, or call for any additional information, or direct any further inquiry that the nature and circumstances of the case may seem to demand.(l)

Subordinate Zillah Courts may suspend Pleaders from Office, reporting the circumstance to Zillah Judge.

54. The Subordinate Zillah Courts may, without the previous sanction of the Zillah Judge, suspend from office any Pleader attached to their Courts respectively who may be guilty of any gross act of fraud or misconduct; but, in such instances, they should report the circumstances of the case, with as little delay as possible, for the information and orders of the Zillah Judge.(m)

(g) Sec. 8, Reg. XIV, 1816.
(h) Cl. 1, Sec. 14, Ibid.
Sec. 2, Act XX, 1853.
(i) Cl. 6. Sec. 20, Reg. XIV, 1816.
(j) Sec. 22, Ibid.
C. O. 5th Nov. 1892. A.
(k) C. O. 11th Aug. 1853, No. 129.
(l) Cl. 2, Sec. 10, Reg. XIV, 1816.
Sec. 10, Reg. VIII, 1816.
Sec. 11, Act I, 1846.
(m) Sec. 11, Reg. XIV, 1816.

When sunnud should be recalled.

55. Whenever a Pleader may be dismissed from office, or may die, or may resign his situation, his sunnud of appointment should be recalled and cancelled by the Court to which he may have been attached.(n)

Pleaders may arbitrate.

56. The Courts are empowered to permit any of their authorized Pleaders to be Arbitrators in depending suits, subject to the rules in force for referring suits to arbitration.(o) But a Pleader cannot be nominated as an Arbitrator, should he have been engaged by one of the parties to the suit, previously to its being referred to arbitration.(p)

Provisions for making Pleaders acquainted with the Regulations.

57. That the Pleaders in the several Courts, as well as all other persons, may have it in their power to render themselves acquainted with the Regulations enacted by Government, there should be kept for public inspection, in the several Courts of Judicature, printed copies of all such Regulations, and of the translations in the native languages, bound up with the annual Indices. Until the Regulations which may be passed in each year are so bound up, the separate copies of each Regulation with the translation which may be printed and circulated to the Courts should be exposed as above mentioned. The Regulations should be deposited upon a table expressly allotted for that purpose in some part of the Court room, and should lie for public inspection every day, Sunday excepted, during the ordinary hours of business, when the Pleaders of the Courts and all other persons may refer to the Regulations, or take copies or extracts from them in the Court room. On receipt of the translations of the Regulations in the country languages, the several Courts should cause the same to be publicly read in Court, and should require the Native Pleaders to take copies of any of those translations which relate, directly or indirectly, to the administration of Civil Justice.(q)

Rules relating to Zillah Court Pleaders applicable to Pleaders of Sudr Ameens' and District Moonsiffs' Courts.

58. The rules applicable to the Pleaders in the Zillah Courts are applicable to the authorized Pleaders employed in the Courts of the Sudr Ameens;(r) and, so far as they are capable of application, to the Pleaders of District Moonsiffs' Courts.(s)

(n) Cl. 2, Sec. 4, Reg. XIV, 1816.
(o) Sec. 19, Ibid.
(p) S. U. Pro. 10th March 1855.
(q) Sec. 40, Reg. XIV, 1816.
(r) Sec. 10, Reg. VIII, 1816.
(s) Sec. 11, Act I, 1846.

59. None of the provisions aforesaid are applicable to Pleaders who may be employed in suits before Village Moonsiffs, Village or District Punchayets, or Collectors, under the provisions of Regulations IV, V, VII and XII of 1816.(t)

To what Courts they do not apply.

60. Judicial Officers are prohibited from employing their relatives as Pleaders in the Courts presided over by them.(u)

Relatives of Judicial Officers cannot be employed as Pleaders.

61. In suits before Village Moonsiffs, Village and District Punchayets, and Collectors, the Plaintiffs and Defendants may employ a relative, a servant or a dependant to plead for them, on furnishing the person so employed, with a Vakalutnamah describing his relationship to his employer and the matter in which he is empowered to act; and such Vakalutnamah should be exhibited by the Pleader before he can be permitted to do any act in the suit.(v)

Who may plead before Village Moonsiffs, Punchayets and Collectors.

(t) Sec. 39, Reg. XIV, 1816.
Sec. 13, Act I, 1846.
(u) S. U. Dy. 18th April, 1853.
(v) Sec. 9, Reg. IV, 1816.
Cl. 3, Sec. 4, Reg. V, 1816.
Cl. 3, Sec. 4, Reg. VII, 1816.
Sec. 3, Reg. XII, 1816.
Sec. 19, Reg. V, 1822.

PRINCIPAL SUDR AMEEN.

Who are eligible for the Office.

1. No person whatever, is, by reason of place of birth or by reason of descent, incapable of being a Principal Sudr Ameen.(w)

Who may appoint.

2. The appointment of Principal Sudr Ameens rests with the Governor in Council.(x)

3. Applications for the office should be addressed to the Private Secretary to the Governor (y)

Solemn Declaration.

4. Every Principal Sudr Ameen, previously to entering on the duties of his office, should make and subscribe before the Governor in Council, or before any person whom the Governor in Council may commission to administer it, a solemn declaration, similar to that required to be made by the Zillah Judges.(z)

Amenability to the Courts for official acts.

5. Every British born subject, or descendant of a British born subject, appointed a Principal Sudr Ameen is, in respect of all acts done by him as such, liable to the same proceedings, as well criminal as civil, and amenable to the same tribunals, as if he were not of British birth or descent.(a)

No person exempt from their jurisdiction.

6. No person whatever, by reason of place of birth or by reason of descent, is, in any civil proceeding, exempted from the jurisdiction of a Principal Sudr Ameen.(b)

What rules apply to their Courts.

7. The rules relative to the Seal, Pleaders, Jurisdiction and proceedings generally of the Courts of Subordinate Judges, are applicable to the Principal Sudr Ameens' Courts.(c)

8. A Principal Sudr Ameen cannot receive an appeal from the decision of any European Officer of Government.(d)

9. Nor can a Principal Sudr Ameen issue any Precept to any Collector, Subordinate or Assistant Collector, or other European Officer of Government.(e)

(w) Sec. 3, Act. XXIV, 1836.
(x) Sec. 3, Reg. VII, 1827.
(y) S. U. Dy. 5th June 1848.
(z) Sect 4, Reg. VII, 1827.
(a) Sec. 4. Act. XXIV, 1836.
(b) Sec. 2, Act. XI, 1846.
(c) Sec. 5, Reg. VII, 1827.
(d) Sec. 8, Ibid.
(e) Sec. 9, Ibid.

10. In all cases in which a Principal Sudr Ameen has occasion to call upon a Collector, Subordinate Collector or Assistant Collector, or other European Officer, to do any thing in any matter before his Court, he must transmit to such Officer an Extract from the Proceedings of the Court containing a brief abstract of the case and specifying what is required to be done by him, with a request that he will comply therewith, and return an answer stating what he has done, within a certain time; and such Officer must comply with the requisition, in the same manner as if it had been accompanied by a Precept from the Zillah Judge.(*f*)

Procedure, if any thing be required to be done by an European Officer in any matter before a P. S. Ameen.

11. If such Officer do not comply with such requisition, the Principal Sudr Ameen is to report the case to the Zillah Judge, who will proceed therein as if the requisition had been made by a Precept from himself.(*g*)

12. A Principal Sudr Ameen is authorized and required to perform the duties of Register of Deeds, as prescribed in Regulation XVII of 1802,(*h*) and to take charge of the property of persons dying intestate.(*i*)

A P. S. Ameen registers Deeds and takes charge of intestate property.

13. A Principal Sudr Ameen has no jurisdiction over a Sudr Ameen.(*j*)

No jurisdiction over Sudr Ameens.

14. Whenever there may be more than one Principal Sudr Ameen attached to the Court of a Zillah Judge, and not having any special local jurisdiction, it is the duty of the Judge to allot from time to time the several District Moonsiffs' divisions which should constitute the special local jurisdiction of each Principal Sudr Ameen.(*k*)

Local jurisdiction to be specified when there may be more than one P. S. Ameen in a Zillah.

15. A Principal Sudr Ameen may communicate direct with the District Moonsiffs over whom he has jurisdiction.(*l*)

Direct communication with D. Moonsiffs.

16. He cannot fine or suspend a District Moonsiff;(*m*) but every instance of misconduct or neglect of duty in a District Moonsiff within his jurisdiction should be reported by him to the Zillah Judge.(*n*)

A Moonsiff cannot be fined or suspended by a P. S. Ameen.

(*f*) Cl. 1, Sec. 7, Act. VII, 1843.
(*g*) Cl. 2, Ibid.
(*h*) Sec. 5, Reg. XI, 1831.
(*i*) S. U. Pro. 9th October 1843.
(*j*) S. U. Pro. 9th November 1843.
(*k*) Sec. 3, Act. IX, 1844.
(*l*) S. U. Pro. 9th October 1843.
(*m*) Sec. 11, Reg. VII, 1827.
(*n*) Sec. 12, Ibid.

English translations of records unnecessary.

17. It is not necessary that any document prepared in a Principal Sudr Ameen's Court should be accompanied with a translation in English.(*o*)

Mode of address

18. In communications to and from Principal Sudr Ameens the name of the Individual should be omitted, and his Office alone designated. *e. g.*

To or From the Principal Sudr Ameen of————.(*p*)

Communications between P. S Ameens, S. Ameens and D. Moonsiffs.

19. Communications between Principal Sudr Ameens, Sudr Ameens and District Moonsiffs in matters coming officially before them should be in the form of a Memorandum or a Return to Precept, if a Precept have been issued.(*q*)

Signature.

20. Native Principal Sudr Ameens may, at their option, sign their names in English or in any other character, but always in full, instead of employing initials; using only one character on all occasions, and not employing different characters at different times.(*r*)

Cannot trade.

21. Principal Sudr Ameens are prohibited from engaging in any trading speculations.(*s*)

Nor lend money.

22. Nor can they lend money to any person within their jurisdiction. Loans so made are not recoverable in any Court of Civil Judicature.(*t*)

Liability to removal from station.

23. Principal Sudr Ameens are liable to be removed by the Government from one station to another, whenever such a measure may be recommended by the Sudr Adawlut in any particular case.(*u*)

(*o*) Sec. 13, Reg. VII, 1827.
(*p*) S. U. Dy 9th October 1843.
(*q*) S. U. Dy. 30th August 1844.
(*r*) C. O. 13th November 1843. No. 83
(*s*) S. U. Dy. 28th December 1843.
(*t*) C. O 4th December 1845. No. 101.
(*u*) S. U. Dy. 20th October 1852.

PROCESS.

1. Upon the institution of a Civil suit in any Court, of whatever rank, the Judge of the Court should issue a Notice to the Defendant, containing a short statement of the demand, with a requisition to attend in person or by Vakeel, and to deliver an answer to the Plaint on or before a certain day specified in the Notice. Notice to Defendant.

2. The Notice should be in the following form :(v) Form of Notice.

In the Court of.....

Suit No.....of 18...

A. B.....Plaintiff.

versus

C. D.....Defendant.

To,

C. D. residing in the Village of.....attached to the Talook of.....

Take notice that A. B. of.....has instituted a suit against you in this Court, for the recovery of*.....

.....

You are therefore required to acknowledge the receipt of this Notice by endorsement, and further to attend in person, or by Vakeel, and deliver an answer to the Plaint, on or before the.....

Given under my hand and the seal of the Court, this.....day of.....18.....

(L. S.)

E. F.
Judge. (w)

* Enter a short statement of the demand.

3. The Notice abovementioned and all other Processes issued by the Courts should be written or printed in one of the current languages of the country where the Court is held,(x) sealed with the seal of the Court, and signed by the Judge (y) Language of Process.

(v) Cl. 1, Sec. 2, Reg. II, 1811.
Cl. 1, Sec. 19, Reg. VI, 1816.
(w) S. U. Dy. 8th August 1855.
(x) Cl. 5, Sec. 15, Reg. XV, 1816.
(y) Sec. 21, Reg III, 1802.

4. The country language in which all processes should be written, means the language most familiar to the party or parties concerned.(z)

By whom executed.

5. In the Zillah and the Subordinate Zillah Courts, Processes are executed by the Nazir, through his inferior Officers, the Batta Peons attached to the Court; and in Courts of District Moonsiffs by the Batta Peons. The Courts may deliver Processes to the parties themselves for execution, but on no occasion can they be given for this purpose, to their Vakeels.(a)

Contents of Process.

6. The name of the Peon deputed, the amount of his batta, and the number of days for which he is to receive it, should be endorsed on the Process.(b) The date on which it should be returned into Court should be also inserted, or otherwise the process would be illegal.(c) One Peon only should be employed in the service of a Process, excepting in cases in which the Judges may think two Peons necessary; but no more than two, should in any case be employed on a single Process.(d)

Batta Rules.

7. The batta chargeable for the service of processes of every description should be at the rate of 3 annas per diem, the rate of travelling being calculated at 15 miles per diem going and returning,(e) beyond which distance no Peon should be required to travel in one day.(f)

8. Besides the number of days required for the Peons to go to, and return from, the place where a process is to be served, two days' batta in addition should be charged for serving every subpœna, process of arrest and process of attachment, and one day's, for service of every other description of process.(g) When a Batta Peon is unavoidably detained at a village in selling property in execution of a process of Court, it is competent to the Judge, whose process he is executing, to order, at his discretion, payment of batta at the usual rate for a certain number of days, the number of which should be fixed with reference to the circumstances of the case.(h)

(z) Cl. 6, Sec. 15, Reg. XV, 1816.
(a) Sec. 5, Reg. III, 1802.
S. U. Dy. 8th February 1855.
(b) Sec. 21, Reg. III, 1802.
(c) S. U. Pro. 8th December 1834.
(d) Sec. 21, Reg. III, 1802.
(e) S. U. Pro. 7th June 1855.
(f) S. U. Pro. 25th June 1855.
(g) C. O. 13th November 1843. No. 84.
(h) S. U. Pro. 8th July 1844.

9. A Batta Peon serving process at the Kusbah station is entitled to receive the authorized amount of daily batta.(*i*)

10. The Civil Judge should cause to be framed (revising it himself before adoption) a Table in the vernacular language, for suspension in the Court house of each District Moonsiff, showing the computed distance of each village within the jurisdiction, from the Court station, and the number of days allowed for the service of Process, calculated at the rate of 15 miles per diem going and returning. This Table being exposed under the signature and seal of the Civil Judge in each District Moonsiff's Court for general information, no mistake can occur, or extra demand be made.(*j*)

11. The amount of batta payable on Processes should be paid into Court previously to the issue of Process. All sums received during the month on this account should be lodged in Court and entered in a Register kept for the purpose. An abstract statement showing the receipts and disbursements of Batta should be submitted with the Quarterly Returns to the Zillah Court by the Courts subordinate to it.(*k*)

12. The number of Processes issued by a Court, and the batta payable thereon, should regulate the number of Batta Peons to be employed, each of whom should not be paid less than 4 Rupees per mensem from the batta money collected during the month; such payment being made at the commencement of the ensuing month. The names of the Peons on the establishments of the Courts subordinate to the Zillah Court are to be registered in a List, which cannot be altered without the permission of the Zillah Judge. Any person not so registered, cannot be employed in the service of a Process, save upon special grounds, which should be recorded in the Proceedings of the Court and be likewise endorsed on the back of the Process. Any Peon demanding or exacting batta in addition to the sum deposited in the Court is to be dismissed.(*l*)

13. In Pauper suits all processes should be served through the Peons on the Establishment of the Court without any expense to the Pauper.(*m*)

Process in Pauper suits.

(*i*) S. U. Pro. 8th July 1844.
(*j*) C. O. 13th November 1843, No. 84.
(*k*) S. U. Pro. 5th July 1854.
(*l*) Ibid.
(*m*) Cl. 1. Sec. 7, Reg. VII, 1818.
Vide page 102.

Process to be immediately served.

14. Every Process should be immediately served or executed, without application to any person, or the interference of any individual, according to its requisition, and within the limits of the jurisdiction of the Court.(*n*)

Service on Agent of Defendant,

15. If the Defendant have an Agent at the place where the Court is held, expressly empowered, either by a clause in his general Mooktyarnamah, or by a separate Mooktyarnamah granted for the purpose, to receive on behalf of the Defendant any judicial process which may not be specially ordered to be served personally, by an Officer of the Court; the Notice should be tendered to such Agent, to be communicated by him to his Principal, and the Agent's acknowledgment endorsed upon it, should be accepted as a sufficient proof of service.(*o*)

on Defendant within the jurisdiction,

16. Where the Defendant has not an Agent upon the spot, or has not expressly authorized his Agent to receive such Processes, or where the Agent declines to receive the Notice for communication to his Principal, and the Defendant be resident within the jurisdiction of the Court, it should be served on him through the Nazir of the Court by a Peon, who should require the acknowledgment of the Defendant to be endorsed upon it, or, if he be absent from his usual residence, the acknowledgment of his principal Agent, or of any person acting for him during his absence.(*p*)

on Defendant in another Zillah,

17. If the Defendant be resident within the jurisdiction of a different Zillah, the Notice should be transmitted to the Judge of that Zillah, who should cause it to be served in the same manner.(*q*)

on Defendant beyond reach of the Courts,

18. If the Defendant be not resident within the jurisdiction of *any* of the Civil Courts, and if the suit be cognizable by the Court in which it has been instituted; either (in claims to land or other immovable property) from the property claimed being within the jurisdiction of the Court; or, (in other cases) from the cause of action having arisen within its jurisdiction; the Notice, where the suit is for land or other immovable property, is to be served upon the Defendant's Agent or representative in charge of the property; and in other suits, it is the duty of the Judge to cause notice of the claim to be

(*n*) Sec. 15, Reg. III, 1802.
(*o*) Cl. 2, Sec. 2, Reg. II, 1811.
(*p*) Cl. 3, Ibid.
(*q*) Ibid.

conveyed to the Defendant in such manner as may appear most certain and convenient, according to the circumstances of the case.(r)

19. When the Defendant is resident within the jurisdiction of the Supreme Court, service should be effected in the manner prescribed by Act XXIII of 1840.(s)

on Defendant within jurisdiction of Supreme Court.

20. The Notice having been served upon the Defendant, he must, in obedience to its requisition, appear in Court, either in person or by Vakeel, and the Court, upon his appearing, is to fix a day, according to its discretion, for him to answer the complaint; and may at any time allow him, if it think fit, a further period for delivering his Answer. The Defendant provides himself, at his own expense, with a copy of the Plaint (t)

Appearance of Defendant.

21. If a Defendant, to whom the usual Notice has been issued from a Court, (of whatever rank,) abscond; or cannot, after diligent search, be found; or shut himself up in any building; or retire to any place; or refuse to give the required acknowledgment of the Notice being served upon him; the Court,—on receiving a Return to this effect from the Nazir or Peon entrusted with the service of the Notice, with the addition of a certificate of what has occurred, written on the back of the process by the person entrusted with its execution, and verified by the signature of some person or persons being neighbors of the Defendant,—should affix in a conspicuous part of the Court-room, a Proclamation, written, like the Notice, in the current language of the country.(u)

Proclamation if Defendant evade service.

22. The Proclamation should contain a copy of the Notice, and an intimation, that if the party do not appear on a day named (being not less than 15 days from the date of affixing the Proclamation) the Court will proceed, without further notice, to try, and determine the cause without his appearance or answer;(v) *e. g.*

Form of Proclamation.

In the Court of.....

Suit No.....of 18...

A. B.....Plaintiff.

(r) Cl. 3, Sec. 2, Reg. II, 1811.

(s) *Vide page* [illegible].

(t) Sec. 5, Reg. III, 1802.
Sec. 23, Reg. VI, 1816.

(u) Sec. 13, Reg. III, 1802.
Sec. 3, Reg. II, 1811.
Sec. 21, Reg. VI, 1816.

(v) Ibid.

versus

C. D.....Defendant.

To.

C. D. residing in the village of.....
attached to the Talook of.....

Whereas A. B. of.....has instituted a suit against you in this Court, for the recovery of... .....and whereas a Notice was duly issued, requiring you to attend and deliver an answer to the Plaint on or before the..... and whereas it appears from the return of the Nazir, that after diligent search, you were not to be found, and that the said Notice was not served upon you according to the exigence thereof; Proclamation therefore is hereby made, that if you do not appear in person, or by Vakeel, on or before the .....day of.....the Court will proceed to try the cause ex-parte, and give judgment, as if you had appeared, and answered to the Plaint.

Given under my hand and the seal of the Court this..... .....day of.....18...

L. S.

E. F.
Judge.(*w*)

Where it should be affixed.

23. A copy should be affixed in the Court House, and a copy on the outer door of the Defendant's usual place of residence, or on some conspicuous place near it. The Nazir, or Peon, is to return it with an endorsement, stating when and where it has been fixed up.(*x*)

Appearance of Defendant.

24. If the Defendant appear within the period fixed by the Proclamation, the Court should give him time to file his answer.(*y*)

Security for appearance of Defendant, not requisite generally.

25. If a Defendant, after receiving the usual Notice, or after Proclamation, attend in person or by Vakeel, and deliver his answer to the Plaint, he is in general to be allowed to defend the cause to its determination, without being called upon to give any security in respect of it.(*z*)

(*w*) S. D. Dy. 8th August 1855.
(*x*) Sec, 18, Reg, III, 1802.
Sec. 21. Reg. VI, 1816.
(*y*) Sec. 23, Reg. VI, 1816.
(*z*) Cl. 1. Sec. 4, Reg. II, 1811.

26. But if the Judge (of whatever grade) be satisfied by sufficient proof that there is reason to believe the Defendant intends to abscond, and withdraw himself from the jurisdiction of the Court, he may, either on the institution of the suit or at any time whilst it is depending, issue a summons upon the Defendant containing a short account of the demand and requiring him to give security for his appearance (a). When this requisite.

27. Warrants for security to be furnished by a Defendant are to be in the following form: Form of Warrant for security.

To

J. K.

Nazir of the Court.

Whereas A. B. has instituted a suit in this Court against C. D. for the recovery of....., and whereas the said A. B. has satisfied the Court by sufficient proof that the said C. D. intends to abscond and to withdraw himself from the jurisdiction of the Court, you are therefore hereby authorized and required to demand good and sufficient security in the sum of Rupees.....from the aforesaid C. D, for his personal appearance before this Court, and in the event of the said C. D. not giving good and sufficient security as aforesaid, you are further authorized and commanded, to take the said C. D. into custody and to bring him before this Court.

Given under my hand and the seal of the Court this... .....day of..... .....18...

L. S.

N. O.
Judge. (b)

28. The summons should be served by the Officers already mentioned as employed in serving Notices. In the event of the Defendant not giving the required security, the Officer is to take him into custody and bring him before the Court. The Nazir &c. should return the summons on the day appointed, with an endorsement specifying in what manner he has executed it.(c)

(a) Sec. 5, Reg. III, 1802.
Cl. 1, Sec. 4, Reg. II, 1811.
Sec 3, Act. XIX, 1855.

(b) S. U. Dy. 8th August 1855.
(c) Sec. 5, Reg. III, 1802.

Defendant to be committed to jail till he gives security.

29. If the security be not given, the Defendant should be committed to close custody until it be given, or until the Decree of the Court be complied with, or until an attachment of property shall have taken place, to secure the execution of the ultimate judgment in the cause.(d)

30. The following form of Security Bond, or an instrument to the following effect, should be executed by the sureties:

Form of Security Bond.

Whereas a suit has been instituted in the ..... Court of..... .....by A. B. Plaintiff, against C. D. Defendant, and whereas I,.....inhabitant of.....in the Zillah of..... have voluntarily become security for the appearance of the said Defendant to answer to the said suit and perform all such orders as may be passed thereupon, until the final decree on it shall have been carried into execution, I do therefore hereby engage and bind myself, my heirs, and Executors, that the said Defendant shall appear, in person, or by Vakeel, to make answer to the Plaint against him in the suit aforesaid on or before the.....day of.....; and further that the said Defendant shall personally attend in the said Court whenever the same may be required by the Judge thereof at any time whilst the above suit is depending before the Court, or before the final decree which may be passed thereupon by the above Court, shall be fully and completely carried into execution, in default of which, and in the event of my not producing the said Defendant when called upon, I will be answerable for such sum as may be adjudged against him, and for the due performance of whatever order or decree may be passed against him on the suit abovementioned, provided the same does not exceed the sum of..... Rupees.

Dated this.....day of.....18...

Sealed and delivered in the
presence of L. M.
N. O. and P. Q. (e)

Judge to fix amount.

31. The Judge in the first instance should demand from the Defendant such security only, as may seem necessary to secure his appearance during the trial of the suit, and the amount fixed by the Judge should be stated in the Process. But if, in the course of the proceedings, the security so taken, appear to the Judge to be insufficient, he may take such further security as

(d) Cl. 1, Sec. 4, Reg. II, 1811. (e) S. U. Dy. 8th August 1855.

he may think necessary to insure the appearance of the Defendant. If judgment be given against the Defendant in the Zillah Court, the Judge should immediately proceed to execute it in conformity to the Regulations; or, if the case be appealable and an appeal be lodged in the mode prescribed, he should, as the case may be, stay such judgment, on receiving good security, or enforce it according to established rules.(*f*)

Remedy against sureties.

32. If a Defendant, after giving security, do not appear, or having appeared, refuse to answer, the Plaintiff may sue the sureties on their engagement, and recover from them whatever is found due to him from the Defendant; or he may proceed against the Defendant, as Defendants are proceeded against, who have been served with a summons, and have not appeared, or have refused to answer.(*g*)

When Malzamany security is to be taken.

33. In any case, if the Judge be satisfied by sufficient proof that there is ground to apprehend the Defendant means to dispose of the property in his possession by any private transfer, or to cause the public sale of any disputed land by withholding the assessment upon it, or to remove any personal property from the jurisdiction of the Court, whilst the suit against him is depending, for the purpose of avoiding the execution of an eventual judgment against him; it is competent to the Judge to call upon the Defendant for security in such sum as may appear sufficient to make good the ultimate judgment of the Court.(*h*)

Attachment of property, if security be not given.

34. In the event of such security not being given (within a reasonable time allowed for that purpose,) the Judge may cause the attachment of any land, effects or other property belonging to, or possessed by, the Defendant, to the amount or value of the suit depending, or the attachment of which may be deemed necessary to secure the execution of the judgment to be passed in the cause.(*i*)

How it is made.

35. The attachment in such cases should be made by a written order of the Court, read and proclaimed upon the spot where the property is situated, and affixed there in some conspicuous situation; after which any private alienation of the property sequestered, whether by sale, gift or otherwise, during the continu-

(*f*) Cl. 2, Sec. 4, Reg. II, 1811.
(*g*) Sec. 14, Reg. III, 1802.
(*h*) Cl. 1, Sec. 5, Reg. II, 1811.
(*i*) Sec. 22, Reg. VI, 1816.

ance of the attachment is illegal and void; and any unauthorized removal of the property so attached with a view to oppose or evade the sequestration, is, on proof, punishable as an act of resistance to the process of the Court.(j)

36. The writ of sequestration should run as follows:

Form of Writ of sequestration.

To

J. K.

Nazir of the Court.

Whereas A. B. has instituted a suit in this Court against C. D. for the recovery of.....,* and whereas the said A. B. has satisfied the Court, by sufficient proof, that he has just ground to apprehend the said C. D. means to dispose of his property whilst the suit against him is pending, for the purpose of avoiding the execution of an eventual judgment against the said C. D; You are therefore hereby authorized and required to demand good and sufficient security from the aforesaid C. D. in the sum of.....Rupees to make good the ultimate decision of the Court; and in the event of the aforesaid C. D. not giving good and sufficient security within the period of twenty four hours, you are hereby further authorized and commanded to attach and sequestrate any lands, goods and effects, or other property, belonging to, or possessed by, the said C. D., to the amount of.....Rupees, and to hold the same under attachment and sequestration until a final decision be passed by this Court.

Given under my hand and the seal of the Court this..... day of.....18....

(L. S.)

O. P.
Judge.(k)

Attachment does not oust Defendant from possession or management.

37. Attachments so made have not in general the effect of removing the Defendant or his representative from the possession and management of the land, or other property attached, until a decision be passed in the cause; nor do they preclude any act of the Defendant or of his representative relative to such property, which may be consistent with the object of the attachment.(l)

(j) Cl. 2, Sec. 5, Reg. II, 1811.
(k) S. U. Dy. 8th August 1855.
(l) Cl. 2, Sec. 5, Reg. II, 1811.

38. But if there exist any special cause, (which cause must be recorded on the proceedings of the Court,) or if the suit be for landed property of considerable value, and one wherein it may appear necessary for the purposes of justice, to divest the Defendant from the management of the land until the suit be decided, or security be given, the attachment is to be made through the Collector of the District in which the land is situated, as prescribed in appeal cases in which neither Appellant nor Respondent is able to give security for staying the execution of, or for executing, the original Decree.(*m*)

When he may be so divested.

39. Upon the decision of the suit, the Judge should pass such further order relative to the property attached as may be just, and conformable with the judgment given in the cause. If the Decree be against the Defendant, all right and interest possessed by him in the property attached, saving arrears of rent or revenue due for land and any other *bonâ fide* claims which may be entitled to satisfaction in preference to the Decree, should be held answerable for the execution of the judgment. But if the Plaintiff's claim be dismissed, or be not, in any considerable proportion, established against the Defendant, all expense and loss to the Defendant which may arise from the attachment of his property in consequence of such claim, should be reimbursed to him by the Plaintiff as part of the costs of suit.(*n*)

Disposal of attached property after decision of suit.

40. If, however, at any time previous to the decision of the cause, the required security be tendered, the attachment should be taken off.(*o*)

When attachment may be removed.

41. The above provisions are applicable to Appellate Courts in cases wherein an attachment of property made by a lower Court may be continued during the trial of an appeal before the Appellate Court, or in which the latter Court may judge it proper to order an attachment of property in default of security being given by the Appellant or the Respondent in any depending appeal.(*p*)

When these rules apply to Appellate Court.

42. The security referred to in para 26 is called Hazirzaminy, and that mentioned in para 33, Malzaminy.(*q*)

Definition of Hazirzaminy and Malzaminy.

(*m*) Cl. 2, Sec. 5, Reg II, 1811. *Vide page* 134.

(*n*) Cl. 3, Sec. 5, Reg. II, 1811.

(*o*) Sec. 6, Ibid.

(*p*) Sec. 7, Ibid.

(*q*) C. O. 5th February 1840. No. 63.

43. A Defendant can be committed to Jail for not furnishing Hazirzaminy, but *not* for non-production of Malzaminy.(*r*)

Deposit in lieu of security.

44. When personal bail, or any security is demandable from a party, and he tenders a deposit of money, or promissory notes or other obligations of Government, or any other sufficient pecuniary security to the amount required, such deposit is to be accepted instead of hazirzaminy or malzaminy security, and to be kept by the Treasurer of the Court, being restored or disposed of as the Court may direct, on the termination of the cause, or whenever the purpose for which the deposit is made, shall have been accomplished.(*s*)

Service of Process against Native women of rank,

45. Where the Defendant is a Hindoo or Mahomedan woman of rank, who cannot, according to the customs of the country, appear in a Court of justice, the Judge is not to issue any compulsory process against her, but is to issue a summons requiring her to appear in Court in person or by Vakeel, at a certain time, and to answer to the complaint and abide by the orders which the Court may pass.(*t*)

46. The summons is to be directed to the Nazir of the Court, and is to contain a short account of the nature of the demand, with a notice that, if the Defendant do not appear at the time specified in the summons, or having so appeared, do not answer the complaint at the time which may be fixed by the Court, or if she make any other default, the Court will proceed to try and determine the cause, in the same manner as if the Defendant had appeared, answered, and done what was necessary in defence of the suit. The summons is further to command the Nazir to deliver a copy of it to the Dewan, or some principal servant of the Defendant.(*u*)

47. The Nazir is not to have recourse to compulsion to enforce the summons, but is to serve it in the manner directed, and no other. The Nazir is to return the summons on the day appointed for the appearance of the Defendant, with an endorsement, specifying in what manner he has executed it; and, if he has not executed it, the reason why it has not been executed.(*v*)

(*r*) C. O. 5th February 1840, No. 63.
(*s*) Sec. 8, Reg. II, 1811.
(*t*) Sec. 15, Reg. III, 1802.
(*u*) Ibid.
(*v*) Ibid.

48. If the Defendant appear in person, or by Vakeel, the Court is to fix a certain day, according to its discretion, for her to answer to the complaint, and appoint a day for the parties to deliver in their Pleadings; and the Court is to try and determine the cause in the same manner as suits instituted against persons not being women of the abovementioned description.(*w*)

49. Upon the summons being issued, if the Dewan or other principal servant of the Defendant abscond, or otherwise act, so that the summons cannot be served upon him, or if he cannot, after diligent search and inquiry be found, the Judge, upon the return of the summons, and proof of the fact being made before him on solemn affirmation, is to proceed against the Defendant, in the same manner as against a Defendant, who, after diligent search, cannot be found, or who has absconded, or otherwise acted, so that he could not be served with a summons.(*x*)

50. If a female Defendant, on whom no summons can be served, after the prescribed notice has been issued, do not appear as required, or appearing, neglect or refuse to answer, or do make other default, or admit the truth of the complaint, the Court, on examining the allegations of the Plaintiff only and receiving the depositions of his witnesses, is to decree and give judgment, in the same manner as if the Defendant had appeared, answered, and entered into proof.(*y*)

51. Peons should not be employed in serving Processes against women of rank. This should be done by the Nazir or other principal Officer of the Court.(*z*)

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52. Although Clause second, Section 39, Regulation VII of 1832, authorizes, within the limits of a Military station, the *direct* service on the Troops, by Civil Officers, of Notices, Summonses, Subpœnas, or other Process of mere citation, not involving personal arrest; yet it is desirable, in every practicable case, that such summonses &c. should be executed through the Commanding Officer or other Military authority.(*a*) in Military Stations,

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(*w*) Sec. 15, Reg. III, 1802.
(*x*) Ibid.
(*y*) Ibid.
(*z*) S. U. Dy. 17th February 1825.
(*a*) C. O. 30th April 1842, No. 80, A.

53. Whenever it may become necessary to serve Processes of such nature, within the limits of a Military station, the Process should be accompanied by a letter to the Commanding Officer, or other Military authority, explanatory of its nature.(b)

54. A District Moonsiff's Process for service in a Military Station should not go direct to the Commanding Officer, but through the Zillah Judge.(c)

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from Native States,

55. Processes received from any of the Native States for service through the Company's Courts should be served without charge, by the Peons on the fixed Establishment of the Court, and not by the Batta Peons.(d)

agninst dependents &c. of Rajahs of Tanjore and Tondiman.

56. Processes against the relatives or dependents of the Rajah of Tanjore should be served through the Collector of Tanjore; and those against the subjects of the Rajah of Tondiman, through the Collector of Madura.(e)

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57. It has been ruled that if an Officer charged with the service of a Process enter the outer door of a House without force, he can break the inner door, and arrest the person against whom the Process is issued.(f)

58. A Process received for execution from another Court may be executed by the Court so receiving it, even during its adjournment.(g)

59. It has been held that a search Warrant cannot be executed after sunset.(h)

60. And that a Warrant of arrest against a judgment debtor may be served on a Sunday.(i)

Rules for service of Process within limits of Supreme Court.

61. As regards Processes of the Mofussil Courts required to be served within the local limits of the Supreme Court of Madras, the following rules should be observed.

(b) C. O. 29th October 1844, No. 91.
(c) S. U. Dy. 19th September 1822.
(d) S. U. Dy. 10th March 1849.
(e) S. U. Dy. 25th January 1842.
(f) S. U. Dy. 15th July 1829.
(g) S. U. Dy. 27th June 1834.
(h) S. U. Dy. 22d July 1822.
S. U. Pro. 12th January 1838.
(i) S. U. Pro. 16th November 1855.

62. A copy of such Process, authenticated by the attestation of the Court issuing it, and accompanied by a certified translation in the English language, together with a copy of the Process, and a copy of the translation for each person upon whom service is to be effected, should be forwarded to the Deputy Sheriff of Madras, with a letter requesting him to lay it before a Judge of Her Majesty's Supreme Court. The Judge of the Supreme Court, upon the Process being presented to him, will endorse and direct the same to be executed within the local limits of his Court by the Sheriff, or by a Justice of the Peace, according to the nature of the Process.(*j*) If the Judge find it defective in any matter of form, he may remit it for amendment to the authority which issued it.(*k*)

Process to be forwarded to Deputy Sheriff.

Judge to order execution.

63. Upon the delivery to the Sheriff, of the Process so endorsed, that Officer is to make a Memorandum of the date of delivery, and to execute the Process as if it had originally issued from the Supreme Court and had been delivered at the date noted by him; and he is not to make any distinction, as to priority or otherwise, between its execution, and that of any Process originally issued from the Supreme Court. But all processes, whether original, or endorsed as aforesaid, are subject amongst themselves to the same rules, touching the mode and order of execution, as are established in respect of processes originally issued from the Supreme Court.(*l*)

Sheriff to execute.

64. The Sheriff's liabilities and responsibilities in respect of such Process, and the effect of the Process upon all persons and property, and the consequences of disobeying or obstructing the execution of such Process, as well as the rules touching expenses and other matters where the Process is for the attendance of witnesses, are precisely the same as if the Process had issued originally from the Supreme Court.(*m*)

His liabilities; and effect of Process.

65. In the case of persons seized or detained by virtue of any Process executed within the limits of the Supreme Court, by the Sheriff, it is the duty of the Sheriff, if so required by the endorsement of the Judge, to deliver the party in custody to

Attachment of person.

(*j*) Sec. 1, Act. XXIII, 1840.
C. O. 14th June 1841. No. 77.
C. O. 5th October 1850. No. 118 C.

(*k*) Sec. 6, Act. XXIII, 1840.
(*l*) Sec. 2, Ibid.
(*m*) Sec. 3 and 4, Ibid.

such authority or persons as may be particularly specified in such endorsement, and who may have been charged with the execution of the process by the authority originally issuing it; and for that purpose to cause the party in custody to be conveyed to any place within the Company's Territories beyond the local limits of the jurisdiction of Her Majesty's Court.(*n*)

Judge may order bail to be taken.

66. In the case of any Process required to be endorsed for the seizure or detention of any person, the Judge endorsing the Process may direct, by his endorsement, that bail (the amount and number of sureties to be specified in such endorsement) may be taken; and for this purpose he may call for such documents and make such inquiry as he may think proper.(*o*)

Form of Process.

67. Notices sent to the Deputy Sheriff for service within the local limits of the Supreme Court, should be prepared in the following form, and the requisite copies and translations be fastened to the original by a silk thread, the knot of which should be secured by a seal:

In the Court of the Sudr Ameen in the Zillah of Combaconum.

Original Suit No. 180 *of* 1851.

1. Ramasawmy Nadan.
2. Sappusy Moothoo Nadan.
3. Teenasawmy Nadan.

Plaintiffs. } Of Attoor, in the Talook of Janvady.

Versus

1. Mookanadan,
2. Moottoo Nadan.
3. Armooga Nadan. } Of the same place.
4. Davasenaden, } Of Mootoo Naick Pettah, a suburb of Madras.

Defendants.

To

Davasenaden,

Residing in No. 10, *Mootoo Naick Pettah.*

Take notice that the aforesaid Plaintiffs have instituted a suit in this Court against you and the other Defendants aforesaid, for

(*n*) Sec. 5, Act XXIII, 1840. | (*o*) Sec. 7, Ibid.

the recovery of Rupees (500) Five hundred, due upon a bond jointly executed by you and the other Defendants aforesaid, to Mootya Nudan, the father of the Plaintiffs aforesaid, on the 8th July 1846, at Attoor, a Village situated within the jurisdiction of this Court.

You are therefore required, agreeably to Regulation II. of 1811, to acknowledge the service of this notice by endorsement, and further to attend in person or by Vakeel, and to deliver an answer to the Plaint on or before the 22d April 1851.

Given under my hand and the seal of this Court, this 5th day of April 1851.

(L. S.)

ALAGHIAH.
Sudr Ameen.

68. The names of all the Plaintiffs and the Defendants must be given, and the circumstances which give the Court issuing the notice, jurisdiction over the person on whom the notice is to be served, must be distinctly stated.

69. All other processes for service by the Sheriff should, as far as circumstances will admit, be prepared in the above form.(*p*)

How to be sent.

70. All processes abovementioned must be sent, together with the prescribed copy and translation thereof, to the Deputy Sheriff, by the post, except when they require the arrest of any person, when they should be sent by the Peon or other person who is to receive charge of the party mentioned in the Warrant, when he has been seized, and such Peon is to remain with the original Warrant, in attendance on the Deputy Sheriff, or where the Deputy Sheriff may direct, until the party to be seized has been placed in his charge.(*q*)

71. Sudr Ameens and District Moonsiffs should forward the processes of their Courts, which may require execution under the authority of the Supreme Court, to the Zillah Judge, to be by him transmitted in the prescribed manner to the Deputy Sheriff.

(*p*) S. U. Dy. 30th September 1851. | (*q*) C. O. 14th June 1841, No. 77.

Sheriff's Fees.

72. The following Table of fees on account of the execution by the Sheriff of Madras of Mofussil Processes under Act XXIII of 1840, was circulated by the Sudr Adawlut to the Zillah Judges for their information and guidance, and for the guidance of the inferior Courts within their jurisdiction, with instructions to arrange with such lower Courts for the periodical remittance to the Zillah Court of such sums as may be levied under the Act, with a view to their transmission to the Collector's Treasury for the purpose of being credited to Government.

TABLE.

PROCESS.	CHARGE.		
	Rs.	A.	P.
Summons, ...	2	0	0
Notice, ...	2	0	0
Isteyarnamah, ...	2	0	0
Proclamation, ...	2	0	0
Warrant, ...	4	0	0
Execution, ...	4	0	0

(r)

73. All Processes forwarded by post should be sent on the Public service.(s)

Resistance by person not holding land.

74. If any person, not being a Zemindar, independent talookdar or other actual proprietor of land, or a dependent talookdar, or a farmer of land holding a farm immediately of Government, resist, or cause to be resisted, any process, rule, order or decree of the Sudr Court, or of a Zillah or Subordinate Zillah Court; the Court, on proof of the resistance being made by oath or solemn affirmation, to its satisfaction, is to summon him to answer to the charge. If he abscond, or shut himself up in any building, or retire to any place so that he cannot be served with the summons, the Court is to proceed against him in the manner directed with regard to other persons absconding, or otherwise acting as above mentioned, so that they cannot be

(r) S. U. Dy. 19th September 1853. | (s) S. U. Dy. 1st November 1855.

served with the process of the Court.(*t*) If he do not appear within the prescribed period, or if he appear, and the Court, after receiving his answer, and hearing the evidence which he may adduce, consider the charge to be proved against him, he is to be adjudged to pay such fine to Government as the Court may think proper, upon a consideration of his offence and of his situation in life.(*u*)

Fine.

75. If the person convicted do not prefer a summary appeal within the time prescribed for lodging such appeals, the Court is to levy the amount by the same process by which it is empowered to execute its decrees for sums of money.(*v*)

When and how to be leived.

76. If the fine imposed by a Zillah Court do not exceed 5000 Rupees, or if it be above that sum, and the offender do not prefer an appeal to the Sudr Adawlut within the prescribed time, the Court is to proceed to levy the amount by the same process by which it is empowered to execute its Decrees for personal property.(*w*)

77. If a Zemindar, independent talookdar or other actual proprietor of land, or a dependent talookdar resist a process of the abovementioned Courts, or cause it to be resisted, the Court is to proceed against him in the first instance as against one who does not fall within any of these descriptions. If it consider the charge to be proved, it may either fine him under the rules already stated, or it may decree that he shall, from the date of the decree, forfeit his Zemindary, talook, or other estate, in which the resistance may have been made; or if the resistance shall have been made out of the limits of his estate, the Zemindary, talook or other landed property that he may possess within the jurisdiction of the Court, whose process has been resisted.(*x*)

Resistance by Land-holders.

Fine; or forfeiture of land.

78. If the cause be not appealed within the time limited for preferring appeals, the Court, immediately upon the expiration of that period, should forward a copy of its decree and proceedings to the Governor in Council.(*y*)

(*t*) *Vide page* 283.
(*u*) Sec. 26, Reg. III, 1802.
Sec. 26, Reg. IV, 1802.
Sec. 27, Reg. V, 1802.
(*v*) Ibid.
(*w*) Sec. 26, Reg. IV, 1802.
(*x*) Sec. 23, Reg. III, 1802.
Sec. 23, Reg. IV, 1802.
Sec. 24, Reg. V, 1802.
(*y*) Ibid.

79. If an appeal be preferred, and the Appellate Court confirm the decision of the lower Court, and the cause not be further appealable; or, if it be further appealable and no appeal be preferred within the limited time, the Appellate Court should immediately transmit a copy of its Decree and proceedings, and of the Decree and proceedings of the lower Court, to the Governor in Council.(z)

80. But no appeal lies to the Sudr Adawlut, unless the annual produce of the lands of the offender which may be adjudged forfeited (calculating according to the amount paid and payable to the offender by the dependent talookdars, underfarmers, and ryots on account of the year in which the decree may be passed,) exceeds one thousand Rupees. In the event of an appeal from the decree of a lower Court being presented to the Sudr Adawlut, and the admission or rejection of the appeal depend upon the produce of the lands for the year before mentioned, exceeding or falling short of one thousand Rupees, the Court of Sudr Adawlut is to order the lower Court to obtain the necessary information regarding the produce, and after receiving their report, admit or reject the appeal, according as they may deem equitable.(a)

Commutation of forfeiture for fine.

81. The Governor in Council may, after the receipt of a decree adjudging the estate of any person forfeited under these rules, either order it to be executed, or commute the forfeiture, for such fine as, upon consideration of the situation and circumstances in life of the offender, he may think adequate to the offence for which the decree may be passed. If the forfeiture be commuted to fine, the Court which shall have transmitted the Decree and proceedings to the Governor in Council, upon receiving notice, is to levy the amount of it by the same process by which it enforces its decrees.(b)

82. But until the Court receives notice either of the commutation of the forfeiture, or of the confirmation of the decree by the Governor in Council, or until the time allowed for his interposition has elapsed, the decree is not to be considered final, and no steps are to be taken to enforce it.(c)

(z) Sec. 23, Reg. III, 1802.
Sec. 23, Reg. IV, 1802.
Sec. 24, Reg. V, 1802.

(a) Ibid.
(b) Ibid.
(c) Ibid.

83. When the decree is to be enforced, the Court is to issue a Precept, under its seal, requiring the Collector of the District to depute an Ameen with a proper establishment of officers, to sequester the lands, and collect the rents and revenues; or if the lands be deemed too inconsiderable to bear the expense of an Ameen, the Precept is to direct the Collector to order the nearest Tahsildar, or any other officer who may be employed under him in the business of the collections, to take charge of the lands.(*d*) Execution of Decree.

84. If the Decree be confirmed, the Governor in Council may either confer the rights which the offender possessed in the lands, on his heirs, upon their agreeing to make good all sums due from him to Government on account of the lands, and to pay the public revenue assessed upon them, or, if the property be a dependent talook, the revenue payable from it to the proprietor within whose estate it is situated; or he may order the lands to be disposed of at public sale, like lands sold in execution of Decrees generally.(*e*)

85. A farmer holding a farm immediately of Government resisting process, is subject to the same penalties as a resisting Zemindar, but with this difference, that the Governor in Council may either direct execution of a Decree adjudging the lease of a farmer to be annulled, or may commute the forfeiture for an adequate fine; or if the offender be not desirous of being continued in his farm, the Governor in Council may fine him, and compel him to retain the farm during the remainder of the lease, and may hold him and his surety responsible for the discharge of their engagements.(*f*) Resistance by Farmers. Fine or forfeiture of lease.

86. If the lease of the offender be annulled, and a balance be due from him to Government at the close of the year in which the lease may be cancelled, both he and his surety are to be held responsible for the payment of it; and the Collector of the District is empowered to proceed against them for the recovery of it, agreeably to the rules in that respect established. The offender is Recovery of balance due, if lease be annulled.

(*d*) Sec. 23, Reg. III, 1802.
Sec. 23, Reg. IV, 1802.
Sec. 24, Reg. V, 1802.
(*e*) Sec. 24, Reg. IV, 1802.
Sec. 25, Reg. V, 1802.
(*f*) Cl. 1, Sec. 25, Reg. III, 1802.
Sec. 25, Reg. IV, 1802.
Sec. 26, Reg. V, 1802.

permitted to sue the dependent talookdars, underfarmers, and ryots, for any arrears of rent or revenue that may be due from them to him on account of the period during which his lease remained in force.(*g*)

Resistance of a District Moonsiff's process.

87. On a complaint made to a District Moonsiff on oath or solemn affirmation, that any person within his jurisdiction has resisted any process of his Court, the District Moonsiff may summon such person to answer to the charge, and if the offence be proved to his satisfaction, may adjudge the offender to pay a fine not exeeding fifty Rupees, commutable to imprisonment for a term not exceeding one month, in the Civil Jail, or in any place appointed by the executive Government for the confinement of Prisoners in Civil cases.(*h*)

(*g*) Cl. 1, Sec. 25, Reg. III, 1802. Sec. 25, Reg. IV, 1802. Sec. 26, Reg. V, 1802.

(*h*) Sec. 5, Act XIX, 1855.

RECORDS.

Who should keep Records.

1. A native keeper of the Records should be appointed to keep the Civil Records in each Zillah, Subordinate Zillah Court, and in the Sudr Adawlut.(i)

Duties of Record keepers.

2. The Record keepers should keep a Register in the language of the District in which the Court may be situated, in which should be entered all the proceedings, documents and other records belonging to the Courts to which they may respectively be attached, each leaf of which Register should be attested by the official signature of the Judge; and, in the case of the Sudr Adawlut, by the Register; and in the last leaf, the Record keepers should specify in their own handwriting the number of pages contained in the Register.(j)

3. The Record keepers should endorse upon the back of every paper or document which they may enter in the Register, the number of the page in which it may be registered; and the endorsement should be attested with their official signature.(k)

4. It is the duty of the Record keepers to see that the records of the Court are not destroyed by insects, damp, or otherwise; and that they are not removed without the orders of the Court.(l)

5. If any records entered in the Register be destroyed, in consequence of the neglect, or any omission of the Record keepers; or if any such records be not forthcoming, and they not be ble to give a satisfactory account of them, they are liable to dismission from office.(m)

6. The Record keepers should be careful to attend to any rules or orders respecting the duties of their office that may be

(i) Sec. 2, Reg. XIII, 1802.
(j) Sec. 4, Ibid.
(k) Sec. 5, Ibid.
(l) Sec. 6, Ibid.
(m) Sec. 7, Ibid.

prescribed to them by any established Regulation, and also to any directions that may be given to them by the Court to which they may be attached, for the better keeping, preserving or registering of the records.(n)

Diary of proceedings to be kept.

7. The Courts in the Provinces should keep a book in which the daily proceedings in each cause, and every order or act of the Court, should be minuted in the language of the District in which the Court may be held, and attested with the signature of the presiding officer. The Plaint, Answer, Reply and Rejoinder of the parties, and every deposition, exhibit and paper, read and filed in each cause, should be minuted and referred to in this book, by marks or numbers, corresponding to marks or numbers to be endorsed on each document when it may be read in the cause.(o)

8. The Sudr Adawlut should also keep a book of daily proceedings and a separate record of the Appeals or Causes which may be decided by them, in the same manner as is prescribed to the Lower Courts, in the above para; with this difference, that the entries in the book should be attested by the Register, instead of by the Judges of the Court.(p)

9. The book above alluded to, is called the Court Diary.

Each page of the Court Diary should be numbered and signed with the initials of the presiding Officer.

Every interpolation, erasure, or correction in the Diary, pleadings, exhibits, deposition, or other papers filed of record should be placed between brackets, and signed as above.

The total number of erasures, alterations &c. should be noted at the end of every Diary, and at the foot of every paper received or filed, and be similarly verified.(q)

How the record of a suit must be kept.

10. The whole of the documents in the Record of a suit, whether Original or Appeal, should be numbered and dated on the outside; and there should be prefixed to such Record a sheet of paper containing a complete statement of all such documents with their corresponding numbers and dates, together with a brief description of their contents or purport.(r)

(n) Sec. 8, Reg. XIII, 1802.
(o) Sec. 9, Ibid.
(p) Sec. 15, Ibid.
(q) S. U. Pro. 20th February 1850.
(r) Ibid. 4th September 1849.

11. Whenever an original document may be no longer required, it may be returned to the party who filed it, a copy being retained, if requisite, on unstamped paper.(s)

12. The Record of an appeal suit decided by a Subordinate Zillah Court should remain in such Court.(t)

31. But the Records of suits disposed of by Sudr Ameens and District Moonsiffs during the month, should be forwarded on the ensuing month, for deposit in the Zillah Court.(u)

14. All Books officially received are to be considered as public property, and attached to the *Court*. On a change of Functionaries, they are to be duly transferred to the relieving Officer.(v) Every attention should be paid by the Officers presiding over the several Courts to the careful preservation of all such books, and with this view, they should be examined annually, and a list of them, as found on each examination, placed upon record, duly attested with the signature of the Judge.(w)

Books form Court records, and must be annually examined.

15. If any person steal, or for any fraudulent purpose take from its place of deposit for the time being, or from any person having lawful custody thereof, or unlawfully and maliciously obliterate, injure or destroy any Record, Pleading, Decree, Precept, Return, Process, Deposition or other original Document whatever, of, or belonging to, any Court of Judicature, he is liable to trial for the same before the Criminal Court of the Zillah; and, on conviction, to be imprisoned with hard labor in irons for a period not exceeding seven years, and to lashes with a cat-of-nine tails not exceeding one hundred.(x)

Punishment for stealing, injuring &c. Public records.

16. No public papers can be shown, nor copies given, on private application, unless with the previous permission of Government. Any public Officer to whom such application may be made, will submit it to Government through the Chief Secretary, and await their orders.(y)

No record can be shown, nor copies given to private parties, without authority.

(s) C. O. 8th January 1829. A.
(t) S. U. Pro. 5th March 1844.
(u) C. O. 20th May 1831.
(v) S. U. Dy. 6th December 1851.
(w) S. U. Dy. 4th November 1851.
(x) Cl. 1, Sec. 2, Reg. VIII, 1829.
(y) E. M. C. 22d January 1856. No. 62.

Mode of forwarding Banghy Parcels.

17. All Parcels requiring to be forwarded on the public service by the several Courts by the Banghy post, should be securely packed in cloth, wax cloth, or tin; and seals bearing distinct impressions of some device (not that of a current coin) fixed at intervals not exceeding three inches along the lines of sewing by which the cover is secured. Unless Parcels are so made up, they will not be received by the Post Office.(z)

(z) F. S. G. G. 1st May 1855.

REGISTRY.

1. An office for the registry of deeds is established in each Zillah.(a)

Office station.

2. Subordinate Judges and Principal Sudr Ameens perform the duties of Register of Deeds. Previously to entering upon such duties, they are required to make a solemn declaration in the form prescribed by Section 2, Regulation XVII of 1802.(b)

Who are Registers.

3. Memorials of the following deeds may be registered :(c)

What Deeds may be registered.

1st. Deeds of sale, or gift of lands, houses, and other real property.(d)

2d. Deeds of mortgage on land, houses, and other real property; as well as certificates of the discharge of such incumbrances.(e)

3d. Leases and limited assignments of land, houses and other real property, including generally, all conveyances used for the temporary transfer of real property.(f)

4th. Wusseatnamahs or Wills.(g)

5th. Written authorities from husbands to their wives to adopt sons, after their (the husbands') demise.(h)

Registry of deeds antecedent to 1st January 1805 optional.

4. It is optional with parties to register, or not, as they may think proper, any of the descriptions of deeds above specified, which may have been executed, prior to the 1st January 1805, and the not registering such deeds does not in any wise operate to the prejudice of the rights of the parties thereto.(i)

(a) Sec. 2, Reg. XVII, 1802.
(b) Sec. 4 and 5, Reg. XI, 1831.
S. U. Pro. 9th October 1843.
(c) Cl. 1, Sec. 3, Reg. XVII, of 1802.
(d) Cl. 2, Ibid.
(e) Cl. 3, Ibid.
(f) Cl. 4, Ibid.
(g) Cl. 5, Ibid.
(h) Cl. 6, Ibid.
(i) Sec. 4 and 16, Ibid.

5. It is also left to the option of parties to register, or not, as they may think proper, the several description of deeds specified in clauses 3, 4 and 5 of para. 3, whether executed previously, or subsequently to the 1st January 1805; and the not registering such deeds does not in any wise operate to the prejudice of the rights of the parties thereto.(*j*)

Effect of registry.

6. A registered deed of sale, or gift of real property that may be executed on, or after, the 1st January 1805, provided its authority be established to the satisfaction of the Court, invalidates any other deed of sale or gift for the same property, executed subsequently to the said date, which may not have been registered; whether such second or other deed has been executed prior, or subsequently to the registered deed.(*k*)

7. A registered deed of mortgage of real property that may be executed on, or after, the 1st January 1805, provided its authenticity be established to the satisfaction of the Court, takes priority of any other mortgage on the same property, executed subsequently to the said date, which may not have been registered; whether such second or other mortgage has been executed prior, or subsequently to the registered mortgage.(*l*)

Where registry must be made.

8. The registry of all deeds must be made in the register office of the Zillah in which the property affected by them may be situated, and if the property be situated in the jurisdictions of two or more of the Courts, the deeds affecting it must be registered in the office of each jurisdiction.(*m*)

Register book to be kept.

9. Each species of deed must be registered in a separate book; each leaf of which must be paged, and attested by the Subordinate Judge or Principal Sudr Ameen, who must note, in his own handwriting, on the last page of each book, the number of pages contained in each book, and attest the note with his official signature. No register is authentic, excepting such as is so paged and attested.(*n*)

10. Every deed entered in a register book must be numbered, and the hour and date of registry must be noted in the margin

(*j*) Sec. 5 and 16, Reg. XVII, 1802.
(*k*) Cl. 1, Sec. 6, Ibid.
(*l*) Cl. 2, Ibid.

Vide page
(*m*) Sec. 7, Reg. XVII, 1802.
(*n*) Cl. 1, Sec. 8, Ibid.

of the Register book, which must be deposited amongst the records of the Subordinate Zillah Court.(o)

Form of registry.

11. The following forms are to be observed in the registry of deeds.(p)

12. The person or persons executing the deed, or his or their authorized representative, with one or more of the witnesses to the execution of it, are to attend at the Register's Office. The Register is to cause an exact copy of the deed to be entered in the proper Register book; and, after having caused it to be carefully compared with the original, is to attest the copy with his signature, the parties, or their authorized representatives in attendance, subscribing their signatures to such copy, in the presence of two credible witnesses (whose names are also to be subscribed thereto). The original should then be returned with a certificate under the Register's signature endorsed thereon, specifying the hour and date of registry, with references to the book containing the registry thereof, and the page and number under which the same has been entered therein.(q)

13. The certificate of the Register, endorsed agreeably to the forms described in the preceding para, is to be considered, in all Courts of Justice, sufficient evidence of the registry.(r)

14. The Register cannot refuse to register a Bond executed on unstamped paper.(s)

Register books open to public inspection.

Copies of deeds to be granted.

Such copies prove registry if original be lost &c.

15. The Register must, on application being made to him, allow all persons to inspect the register books; as well as grant copies of all deeds registered by him, to persons whom they may concern; and such copies, in the event of the originals being lost, destroyed, or not forthcoming, must be received as sufficient evidence of such deeds in all Courts of Justice whatever; proof being made by the subscribing witnesses to the original deed, that the original was duly executed.(t)

Prosecution of parties counterfeiting or falsifying entries in Register.

16. If any person or persons, be at any time suspected, on sufficient grounds for commitment, of counterfeiting or falsifying any entry in any of the Register books ordered to be kept, or

(o) Cl. 2, Sec. 8, Reg. XVII, 1802.
(p) Cl. 1, Sec. 9, Ibid.
(q) Cl. 2, Ibid.
(r) Sec. 10, Ibid.
(s) S. U. Prc. 15th May 1845.
(t) Sec. 11, Reg. XVII, 1802.

any certificate such as is above directed to be granted, he or they must be prosecuted, on the part of Government, in the Criminal Court of the Zillah, and the several Registers must, as Agents for the prosecution, adopt every legal measure in their power for the proof of the crime, and the due execution of the laws against the offender.(*u*)

Fees for registry.

17. The Register is to be allowed a fee of not more than two Rupees for every deed registered by him, to be paid by the party causing the same to be registered; a fee of not more than one Rupee for every copy furnished of a deed registered by him, to be paid by the party applying for such copy, and a fee of not more than a half Rupee for every search made, on an inspection of the register, to be paid by the party inspecting the same. The Register may refuse the official acts required from him until the fees be paid; and from such fees he must provide the necessary native Officers to make the entries and copies directed, as well as the requisite Stationery.(*v*)

18. The net amount of the above fees, after defraying the necessary expense of the Establishment, must be carried to the credit of Government.(*w*)

When no fee is chargeable.

19. Contracts between Government and private individuals sent for registry by Collectors and their subordinate European Officers, should be registered free of charge.(*x*)

Irresponsibility of Registers for validity of deeds registered.

20. Registers have nothing to do with the authenticity or otherwise, of a Deed tendered for registry, and should not therefore make any preliminary inquiry on that point; the registration being purely a ministerial, and in no wise a judicial, act. They can only refuse to register a Deed when the prescribed forms are not conformed to, and the fee is not paid.(*y*)

When registry may be refused.

When registry should be intimated to Collectors.

21. Registers should intimate to Collectors the registry of all transfers of property consisting of emoluments attached to hereditary Police and Revenue Offices, or generally of property, the alienation or misappropriation of which is declared illegal by Regulation VI of

(*u*) Sec. 12, Reg. XVII, 1802.
(*v*) Sec. 14, Ibid.
(*w*) Sec. 6, Reg. XI. 1831.
(*x*) S. U. Dy. 16th May 1846.
(*y*) S. U. Pro. 21st February 1848.
Ibid. 3d May 1849.

1831, in order that the Revenue authorities may have the opportunity to make inquiry on the subject, and, if necessary, take measures for resuming the Manium, and applying it to the purposes for which it was originally designed.(*z*)

22. A Subordinate Judge or Principal Sudr Ameen, as Register of Deeds, is subject to the control and authority of the Zillah Judge.(*a*)

(*z*) S. U. Pro. 21st June 1849.

(*a*) S. U. Pro. 21st February 1848.
Ibid. 4th April 1848.

REGULATIONS.

Up to what period local enactments were issued.

1. From 1802 till 1834 the local Government enacted Regulations for the internal government of the British Territories immediately subject to this Presidency, but from 1834 the power of legislating for the several Presidencies has been vested in the Governor General in Council.(*b*)

2. Local enactments are termed "Regulations," and those framed by the Governor General, bear the title of "Acts of the Government of India."

Courts to be furnished with copies.

3. Printed English copies of all such enactments, and printed translations in the Persian, Teloogoo, Tamil, or other of the country languages, are distributed, in such proportions as the local Government may direct, amongst the Courts of Justice, the various Public Offices, and to such individuals to whom it may be thought necessary to deliver copies.(*c*)

4. Regulations and Acts take effect from the date of their publication, or the date specially indicated in them.(*d*)

How they are to be made public.

5. The several Courts in the Provinces, as soon as they are furnished with translations of a new Act, should have its provisions explained to the inhabitants at their several stations, by beat of tom-tom; and cause a copy to be affixed in some conspicuous part of their respective Court-houses for general information.(*e*)

6. It is not competent to the Sudr Adawlut to issue any order suspending the operation of any part of the provisions of a Regulation or Act.(*f*)

7. Nor can such provisions be superseded, or in any way modified, by an order of Government.(*g*)

References regarding constructions of Re-

8. In all instances wherein a Precept issued by a Zillah Court to a lower Court may appear to the Judge of such lower

(*b*) Sec. 43, Statute 3 and 4, William IV, C. 85.
(*c*) Sec. 11, Reg. I, 1802.
(*d*) S. U. Pro. 2d March 1810. Ibid. 8th November 1822.
(*e*) C. O. 22d October 1835. No. 19.
(*f*) S. U. Pro. 30th September 1835.
(*g*) Ibid. 16th June 1847.

Court to be contrary to, or unwarranted by, the existing Regulations, he is authorized to state to the Zillah Court, in what respect he considers the Precept to be in deviation from the Regulations, and to suspend execution till receipt of a second Precept in reply to his objections.

gulations to be submitted to Sudr Adawlut.

9. Should such second Precept confirm the first Precept in whole or in part, and require the Judge of the lower Court to execute the same without further reference, he should immediately comply with such requisition. In case however the second Precept do not satisfy the Judge of the lower Court that the Regulations have been rightly construed, he is at liberty, at the same time that he certifies the execution of the order of the Zillah Court, to request that it will transmit copies of the two Precepts and the Returns thereto, with such other papers as may be necessary, to the Court of Sudr Adawlut. The Zillah Court should accordingly transmit such papers to the Sudr Adawlut without any unnecessary delay.(*h*)

10. But no Judge of a lower Court can question the order of the Zillah Court, in cases clearly left to the discretion and judgment of the latter Court by the Regulations. The reference to the Sudr Adawlut above alluded to is to be confined to cases in which the sense of the Regulations, from a difference of construction, or otherwise, may appear doubtful and uncertain.(*i*)

11. The Zillah Judge is to forward such references to the Sudr Adawlut with his own opinion on the point in question; but no determination can be recorded by the Zillah Judge, or communicated by him to the lower Court, excepting in the cases mentioned in paras 8 and 9.(*j*)

12. In all cases of such reference, the determination of the Sudr Adawlut, which is empowered to prescribe the forms and conduct to be observed by the several Courts subordinate to it, in all cases provided for by the Regulations according to its construction thereof, is to be held final and conclusive.(*k*)

Determination of Sudr Court, final.

13. Should any doubt occur to the Sudr Adawlut, with respect to the meaning of any part of the Regulations; or should

Sudr Court to report to Government all doubtful points.

(*h*) Sec. 2, Reg. XXII, 1802.
(*i*) Ibid.
(*j*) C. O. 17th February 1824.
C. O. 11th December 1824.
(*k*) Sec. 3, Reg. XXII, 1802.

it appear to them, on occasion of any reference from the lower Courts, that the Regulations do not sufficiently provide for the case submitted to their decision, they are to report the circumstances of it to the Governor in Council.(*l*)

How Regulations are to be construed.

14. One part of a Regulation is to be construed by another, so that the whole may stand.(*m*)

15. If any Regulation be passed differing from a former Regulation, either wholly or partially, the new Regulation is to be considered as a virtual repeal of the old one, as far as it may differ from the latter, provided that the new Regulation be couched in negative terms, or by its matter necessarily imply a negative.(*n*)

16. If a Regulation that rescinds another Regulation is itself afterwards rescinded, the original Regulation is to be considered as revived, without any formal declaration to that purpose.(*o*)

(*l*) Sec. 4, Reg. XXII. 1802.
(*m*) Sec. 19, Reg. I, 1802.
(*n*) Sec. 20, Ibid.
(*o*) Sec. 21, Ibid.

REVIEW OF JUDGMENT.

Provisions for applying for a review of judgment not appealed from.

1. Any party considering himself aggrieved by a Decree passed in a regular suit or Appeal by a Zillah Court or Subordinate Zillah Court, from which Decree no further Appeal may have been admitted by a superior Court, and who, from the discovery of new matter or evidence which was not within his knowledge, or could not be adduced by him at the time the Decree was passed; or from any other good and sufficient reason, may be desirous of obtaining a review of the judgment passed against him,—is at liberty to present a Petition for the purpose, to the Court which passed the Decree in question.(*p*)

Stamp.

Time.

2. The Petition should be written on stamped paper of the value prescribed in Section 20, Regulation XIII of 1816; and be presented within the period of three months, which period should be calculated according to the provisions of Section 3, Act XXXV of 1837.(*q*)

3. The Courts are nevertheless authorized to admit applications for a review, after the period abovementioned, provided that just and reasonable cause be shown to their satisfaction for the delay. In such cases however the Courts are to proceed with caution, and to state at large, upon the proceedings, their reasons for admitting applications after the limited period.(*r*)

Application may be rejected.

4. Should the Court be of opinion that there are not sufficient grounds for a review, it should reject the Petition, and the order to that effect should be final.(*s*)

If review be necessary, case to be reported to Sudr Court.

5. If, on the contrary, the Court should be of opinion that the review desired is necessary to correct an evident error, or omission, or is otherwise requisite for the ends of justice, it should report the same to the Sudr Adawlut, transmitting, at the same

(*p*) Cl. 2, Sec. 6, Reg. XV, 1816.
(*q*) Ibid.
(*r*) Ibid.
(*s*) Ibid.

time, a statement of the grounds of its opinion, with a copy of the Petition presented to it, and a copy of the Decree passed in the case.(*t*)

Sudr Court may grant review.

6. The Court of Sudr Adawlut, in cases referred to it by the lower Courts, as well as in all cases in which a petition may be presented to it for a revision of its own judgment which may not have been appealed to Her Majesty in Council, or though appealed, the proceedings in which may not have been transmitted to Her Majesty,—is authorized to grant the review desired, if, upon a consideration of the reasons stated, the circumstances of the case should appear in justice to require it. The Sudr Adawlut should record in their proceedings the grounds upon which a review may be granted by it in each instance, and should issue any instructions regarding the admission or rejection of new evidence in the case, which it may deem just and proper.(*u*)

Above provisions applicable to Sudr Ameens and D. Moonsiffs.

7. The above provisions are applicable to Sudr Ameens and District Moonsiffs; excepting that the Petition for review of judgment passed by a District Moonsiff should be presented on unstamped paper(*v*) within one month from the date of the delivery or tender of the copy of the Decree.(*w*)

8. In the event of a District Moonsiff being of opinion that the review applied for is necessary, he should report the case to the Zillah Judge, who may permit such review under the same rules as are prescribed in regard to similar applications to the Court of Sudr Adawlut.(*x*)

9. The order of a lower Court rejecting the Petition for a review in the first instance, or of the higher Court refusing to sanction a review applied for by a lower Court, does not preclude the party from instituting a regular appeal (if the case be appealable) in a competent Court, subject to the conditions and rules prescribed for the admission of regular appeals.(*y*)

10. An order rejecting a Special Appeal may be once reviewed by the Judge or Judges of the Sudr Adawlut by whom

(*t*) Cl. 2, Sec. 6, Reg. XV, 1816.
(*u*) Cl. 3, Ibid.
(*v*) Sec. 7, Act. XIX, 1855.
C. O. 7th March 1842. No. 78.
(*w*) Cl. 1, Sec. 8, Act VII, 1843.
(*x*) Sec. 7, Act. XIX, 1855.
(*y*) Cl. 4, Sec. 6, Reg. XV, 1816.

it may have been passed, or by any Judge or Judges sitting for, and instead of him or them. But no such review should be allowed, unless the Petition be presented within three months from the date of such order,(z) and be written on stamped paper of the value of two Rupees a sheet.(a)

11. Without the express permission of the Sudr Adawlut no Judicial Officer can disturb a decision passed either by himself or by those who have preceded him in the same Tribunal.(b)

12. This rule is not however applicable to an order of a predecessor which may be open to an appeal under the Regulations,(c) and to the cases specified in para 8.

(z) Cl. 1, Sec 9, Act. XVI, 1853.
(a) Cl. 3, Ibid.
(b) C. O. 28th January 1830. C.
(c) S. U. Dy. 18th November 1836.

STAMPS.

Station of General Stamp Office.

1. A general Stamp Office is established at the Presidency under the superintendence of a Civil Covenanted Servant of the Honorable Company, who is designated the Superintendent of Stamps.(*d*)

2. The Superintendent of Stamps is subordinate to the Board of Revenue.(*e*)

3. All paper or other material intended for any of the purposes below mentioned, should be stamped at the Office of the Superintendent, and counter-stamped at the General Treasury of Government. (*f*)

When a stamp is valid.

4. No Stamp is valid, or can be issued from the Stamp Office, until the paper, parchment, cadjan leaf, or other material on which the Stamp has been impressed, has received the prescribed counter-stamp at the General Treasury.(*g*)

5. One set of Stamps applicable to every purpose for which Stamps are required, should be used in the General Stamp Office, bearing inscriptions in the English, Persian, Tamil and Telugu characters, as follows:

Two Annas.
Four Annas.
Eight Annas.
One Rupee.
Two Rupees.
Four Rupees.
Eight Rupees.
Sixteen Rupees.
Thirty-two Rupees.
Fifty Rupees.
One hundred Rupees
One hundred and fifty Rupees.

(*d*) Cl. 1, Sec. 3, Reg. XIII, 1816.
(*e*) Ibid.
(*f*) Ibid.
(*g*) Cl. 1, Sec. 4, Ibid.

Two hundred and fifty Rupees.
Three hundred and fifty Rupees.
Five hundred Rupees.
Seven hundred and fifty Rupees.
One thousand Rupees.
Two thousand Rupees.(*h*)

6. The above Stamps should, in ordinary cases, be impressed on paper of the manufacture of the Territories dependent upon the Presidency of Fort St. George, and it is the duty of the Board of Revenue to regulate the sizes of such paper in such manner as may be best adapted to the convenience of the community, without injury to the public revenue;(*i*) but paper of Goa manufacture may be so stamped, for use in the Malabar Coast.(*j*)

7. Any person desirous of having any instrument executed on Vellum, Parchment, or any other material, instead of paper or cadjan leaf, may have the same stamped, provided it corresponds nearly with the regulated size of stamped paper, on paying the established duty; and Bonds, Deeds of Conveyance, and other instruments executed on any such material, if duly stamped, are receivable in evidence in the Courts of Judicature, in the same manner as if such instruments had been executed on common paper, according to the ordinary practice of the Stamp Office.(*k*)

Instruments on stamped Parchment &c. instead of paper admissible in evidence.

8. It is not necessary for stamped paper or other material to bear the written official signature of the Superintendent of Stamps, or other authorized Officer under him; but stamped cadjans previously to being issued from the Stamp Office, should be signed by a native Register appointed for the purpose by the Superintendent.(*l*)

9. An Office for the sale and distribution of Stamps is established in each District, under the superintendence and responsibility of the Collectors of the land revenue.(*m*)

Offices in the Mofussil.

10. It is the duty of the Collectors and their Assistants, or other European Officers authorized to dispose of stamped

(*h*) Cl. 1, Sec. 5, Reg. XIII, 1816.
(*i*) Cl. 2, Ibid.
(*j*) E. M. C. 17th April 1857. No. 234.
(*k*) Cl. 2, Sec. 5, Reg. XIII, 1816.
(*l*) Sec. 6, Ibid.
(*m*) Cl. 1, Sec. 10, Ibid.

Stamped paper cannot be filed in any Court unless endorsed with signature of the selling authority.

paper, previously to issuing such paper to their native Agents for sale, or to disposing of it themselves, to endorse their official signatures in writing upon each paper; and the Courts of Judicature cannot admit, or file any stamped paper, unless so authenticated.(n)

Stamp for Plaint.

11. In original regular suits instituted in a Court of Judicature, and in appeals, regular or special, preferred from the judgments of any such Court to a Superior Court, if the amount or value of the property claimed do not exceed 16 Rupees, the Plaint or Petition should be written on stamped paper of the value of one Rupee,

If above sixteen and not exceeding	32 Rs;	2 Rs.
If...do	32.....do.....64 Rs;	4 Rs.
If...do	64.....do.....150 Rs;	8 Rs.
If...do	150.....do.....300 Rs;	16 Rs.
If...do	300.....do.....800 Rs;	32 Rs.
If...do	800.....do.....1,600 Rs;	50 Rs.
If...do	1,600.....do.....3,000 Rs;	100 Rs.
If.. do	3,000.....do.....5,000 Rs;	150 Rs.
If...do	5,000.....do.....10,000 Rs;	250 Rs.
If...do	10,000.....do.....15,000 Rs;	350 Rs.
If...do	15,000.....do.....25,000 Rs;	500 Rs.
If...do	25,000.....do.....50,000 Rs;	750 Rs.
If...do	50,000.....do.....1,00,000 Rs;	1,000 Rs.
If...do. 1,00,000 Rupees		2,000 Rs.

(o)

12. The above stamp duty is leviable in suits instituted before District Moonsiffs.(p)

Exemption in favor of Pauper Pleadings.

13. But not in suits or appeals instituted by Paupers;(q) excepting in Pauper Appeals to the Sudr Court, wherein the petition of appeal should be written on stamp paper of the value of 2 Rupees per sheet.(r)

Valuation of suits for Malgoozary lands,

14. In suits for land being Malgoozarry (subject to the payment of revenue to Government) the stamp duty should be calculated on the value of the land, which value should be as-

(n) Cl. 3, Sec. 10, Reg. XIII, 1816.
(o) Sec. 13, Ibid.
(p) Sec. 2, Act. XVII, 1848.
(q) Sec. 7, Reg. VII, 1818.
(r) Cl. 2, Sec. 12, Act. IX, 1855.

sumed at the amount of the annual produce.(s) By the term "annual produce" is meant the aggregate of the sums that may have been paid under the Regulations by the dependent Talookdars, under farmers and ryots, on account of the year in which the claim may be preferred, and that would be payable by them, were the claimant to be put into possession of the lands during that year.(t)

for Lakharaj lands,

15. In suits for land being Lakharaj (exempt from the payments of revenue to Government) the stamp duty should be calculated on the value of the land, assumed at ten times the amount of the annual produce, as defined in the preceding para.(u)

for lands partially assessed.

16. Stamp duty in actions for land partially assessed, should be levied according to the provisions of para. 14.(v)

for the redemption of mortgaged lands,

17 In an action for the redemption of mortgaged lands embracing also a claim for arrears of rent, the latter claim should enter into the valuation of the suit.(w)

18. In actions for the recovery of land under Deeds of Sale and Mortgage Bonds, the stamp duty should be calculated according to the rule contained in para 15; but no money value on such Deeds can be awarded, except in a suit rated as to the Stamp according to the sum of such value.(x)

for the possession of trees,

19. In suits involving the right to possession of trees, the value thereof, and not the annual estimated produce, is to form the basis upon which the value of the stamp duty should be calculated.(y)

for property other than Malgoozary or Lakharaj, and for damages,

20. In suits for houses, gardens, tanks, or other property, real or personal, excepting Malgoozary and Lakharaj lands; and in actions for the recovery of damages in matters relating to marriage, caste or any personal injury, the Plaint should specify, according to the nearest estimate, the exact sum of money, or the amount in which the Plaintiff may be endamaged; and the value of the stamp should be calculated accordingly.(z)

(s) Cl. 1, Sec. 14, Reg. XIII, 1816.
(t) Sec. 3, Reg. III, 1802.
(u) Cl. 2, Sec. 14, Reg. XIII, 1816.
(v) S. U. Pro. 4th April 1845.
(w) S. U. Pro. 29th June 1854.
(x) C. O. 22d January 1852. No. 125.
(y) S. U. Pro. 24th November 1850.
(z) Cl. 3, Sec. 14, Reg. XIII, 1816.

for damages from forcible dispossession of land.

21. In a suit for damages sustained by the forcible dispossession of land, the stamped paper on which the Plaint should be engrossed, should be of a value proportioned to the amount claimed, on account of the produce seized, and on account of damages for the forcible ejection of the Plaintiff.(a)

for maintenance.

22. In an Appeal concerning maintenance, the stamp duty should be levied upon the aggregate amount of the arrears, and of the allowance decreed for future maintenance for one year.(b)

Stamp for Pleadings &c. in summary suits or appeals.

23. The Plaint, Petition or Application, the Answer and other Pleadings in all authorized original summary Suits and summary Appeals; and all Miscellaneous Petitions and Applications, as well as all Vakalutnamahs, should be written on Stamped Paper as follows:

If preferred to a Sudr Ameen, on paper of the value of 4 Annas.

If preferred to a Subordinate Zillah Court, on paper of the value of 8 Annas.

If preferred to the Zillah Court, on paper of the value of one Rupee.

If preferred to the Sudr Adawlut, on paper of the value of two Rupees.(c)

When reduced stamps may be used.

24. In suits cognizable by the Subordinate Courts, but brought before a Zillah Court constituted under Section 45, Act VII of 1843, the value of the stamp must be regulated according to that which would have been demanded in the Subordinate Court.(d)

25. Parties instituting in a superior Court, suits within the competency of a Sudr Ameen, may use the reduced stamps which would have been used in the Court of the Sudr Ameen.(e)

Stamp for Answer &c. in regular suits or appeals.

26. Every Answer, Reply, and Rejoinder, every Supplement, Razeenamah, or Petition filed in any original regular suit, or in any Appeal, regular or special, should be written on stamped paper as follows:

(a) S. U. Dy. 14th December 1824.
(b) S. U. Pro. 25th September 1850.
(c) Sec. 20, Reg XIII, 1816.
(d) S. U. Pro. 9th October 1847.
(e) Sec. 5, Act. IX. 1844.

In the Court of a Sudr Ameen, on paper of the value of 4 Annas.

In a Subordinate Zillah Court, on paper of the value of one Rupee.

In the Zillah Courts and in the Sudr Adawlut, on paper of the value of 4 Rupees.(*f*)

27. The Answer in Appeal suits filed in a Zillah Court, but referred to a Subordinate Zillah Court, should be on paper of the value of one Rupee.(*g*)

Not necessary for Answer &c. in suits before D. Moonsiffs.

28. Excepting the first sheet of the Plaint, no part of the Pleadings or the Proceedings of any suit before a District Moonsiff is required to be on stamped paper.(*h*)

How Pleadings are to be written on stamped paper.

29. All Pleadings, Motions, or Miscellaneous Petitions, and Applications which are required to be engrossed on stamped paper, should be written in a fair legible manner,(*i*) upon only one side of the Sheet;(*j*) and unless prepared in accordance with the following rules, are liable to be rejected for informality:

If the Pleading, Motion or Petition be written in the Malayalum or Canarese language, no more than 30 letters on an average (compound and double letters being counted as single letters,) should be placed in one line.

If in the Tamil or Teloogoo language, no more than 8 words on an average should be written in each line.

Each sheet of Pleadings, Motions, Miscellaneous Petitions, &c., should contain not more than 30 lines.(*k*)

30. If the subject matter of any Plaint, or Petition of Appeal, Answer, Reply, Rejoinder or other Pleading, cannot, under the rule contained in the above para, be conveniently comprised in a single sheet or roll of the stamped paper prescribed for such Plaint, Petition or Pleading, the additional sheets or rolls required for that purpose should be of the value and description of stamped paper specified in para 26.(*l*) But when

(*f*) Sec. 19, Reg. XIII, 1816.
(*g*) F. S. G. G. 23d January 1846.
(*h*) Sec. 39, Reg. VI, 1816.
Sec. 2, Act. XVII, 1848.
(*i*) Cl. 1 and 4, Sec. 23, Reg. XIII, 1816.
(*j*) C. O. 8th August 1809.
(*k*) C. O. 15th February 1836. No. 25.
(*l*) Cl. 2, Sec. 23, Reg. XIII, 1816.

the first sheet of a Plaint filed before a District Moonsiff is of the prescribed value, the additional sheets should be written on plain paper.(*m*)

When a duplicate Plaint may be filed.

31. If, during the trial of a regular suit, it should appear that the Plaint had been written on stamped paper of a less value than that which ought to have been used, and the Court be of opinion that the error or omission did not arise from any fraudulent motive, or from any design on the part of the Plaintiff to evade the provisions of the Stamp Regulations; it is competent to the Court, either to permit, or to direct the Plaintiff or Appellant in the suit, to file a Duplicate of the Plaint on stamped paper, of such value as may be sufficient to complete the full amount of the prescribed stamp duty.(*n*)

Stamps in Appeals.

32. As in an original suit, the Plaint is required to state "according to the nearest estimate, the exact sum of money, or the amount in which the Plaintiff may be endamaged," and upon which the stamp duty is calculated; so, by parity of reasoning, the value of the stamp in an Appeal ought to be calculated on the amount in which the Appellant may consider himself endamaged by the Decree he appeals against, whether adjudged or disallowed, or in other words, the amount actually at issue in the appeal.(*o*)

33. Costs ought not to be included in the amount on which the value of Stamps in Appeals is required to be calculated (*p*)

34. In all authorized cases of regular appeal from the judgments passed by a Zillah Court or any of the lower Courts, the original Petition of Appeal should be written on stamped paper, according to the rates specified in para. 11;(*q*) but where the detailed grounds and reasons for preferring the appeal may be subsequently filed in the Court trying the appeal, as a separate pleading, such Pleading should be written on stamped paper of the value stated in para. 26.(*r*)

35. Petitions soliciting a review of judgment, (excepting when presented to a District Moonsiff,)(*s*) should be written on stamped paper according to the rates specified in para. 23.(*t*)

(*m*) S. U. Dy. 17th July 1850.
(*n*) Cl. 1, Sec. 24, Reg. XIII, 1816.
(*o*) C. O. 5th November 1829, D.
(*p*) C. O. 15th February 1828.
(*q*) Cl. 2, Sec. 8, Reg. XV, 1816.
(*r*) Cl. 5, Ibid.
(*s*) Sec. 39, Reg. VI, 1816.
(*t*) Cl. 2, Sec. 6, Reg. XV, 1816.

Provisions for refund of stamp duty.

36. In cases in which it may clearly appear that Appellants have, from ignorance, preferred a regular, instead of a summary appeal, the difference between the amount of stamp duty paid by them on the institution of the regular appeal, and that which they would have had to pay for preferring a summary appeal, should be refunded.(*u*) When submitting applications to the Sudr Adawlut for sanction to refund stamp duty in such cases, the Zillah Courts need not report the merits or facts of the cases in question.(*v*)

37. But in cases of suits remanded for reinvestigation, the whole of the stamp duty should be remitted, without a reference to the Sudr Adawlut.(*w*)

38. If a Petition of special appeal be rejected by the Sudr Court, the Petitioner is not entitled to receive back the value of the stamp on which his Petition may have been written. The Court is however vested with a discretionary authority, in any particular instance of hardship, to refund any portion, not exceeding three-fourths of the amount of such stamp duty, to the party, or his legal representative.(*x*)

39. If, on the trial of a summary appeal, preferred by a Defendant objecting to the Plaintiff's valuation of his suit before a lower Court, the Zillah Judge be of opinion that the original suit was not from its amount regularly cognizable by the lower Court, but that the irregularity in the institution of the suit did not arise from any fraudulent motive on the part of the Plaintiff, it is competent to the Zillah Judge to direct the lower Court to refund to the Plaintiff the amouut of stamp duty paid on the institution of the suit in such Court; the Plaintiff being, at the same time, permitted to institute his suit *de novo* in the Zillah Court.(*y*)

40. If, on the suit of a Pauper Plaintiff, a judgment be passed in favor of the Plaintiff, and the Defendant appealing from such judgment, obtain a reversal of it with costs, and the original claim be declared groundless, the amount of stamp duty paid by the Defendant upon his appeal should be returned to

(*u*) C. O. 15th February 1830, B.
(*v*) S. U. Pro. 15th October 1845.
(*w*) C. O. 12th March 1855 No. 135.
(*x*) Cl. 5, Sec. 4, Reg. XV, 1816.
(*y*) Cl. 2, Sec. 24, Reg. XIII, 1816.

him or to his legal representative, by the Court into which the same may have been paid; the amount being recovered from the Pauper against whom the final judgment may be passed, in the event of his being found to possess property sufficient to make good the same, as provided in Section 9, Regulation VII of 1818.(z)

41. In all other cases, the Court of Sudr Adawlut is authorized to direct a return of the whole, or a portion, of the stamp duty, as, on due consideration of the circumstances of the case, whether brought before it in appeal, or referred to it by a lower Court, may appear just and proper.(a)

42. Collectors should give effect to all orders for such refunds.(b)

Refund under Act XVII, 1848.

43. Whenever a suit pending in any Court may be dismissed on application of the parties, the Plaintiff is entitled to claim from the Court a Certificate stating the amount of stamp duty paid on the Plaint, with a specification of the number and endorsement of the paper filed, and whether the suit was dismissed before, or after, the completion of the Pleadings.(c)

44. On presenting such Certificate to the Collector of the District, within three calendar months after the dismissal of the suit, the Plaintiff is entitled to a refund of half of the stamp duty, if the certificate purport that the suit was dismissed after the completion of the pleadings; and if before completion of the pleadings, of the whole of the stamp duty; provided always that there is no exception taken to the paper or endorsement thereon.(d)

When Pleadings are completed.

45. Whenever a suit may have been declared exparte, and points recorded, the Pleadings in such suit must be considered completed.(e)

When a suit may be considered dismissed under Act XVII, 1848.

46. A suit is dismissed within the meaning of Act XVII of 1848, whenever the terms of the Plaintiff's application for its removal from the file, call for no order or decree, upon which process of execution can be taken out.(f)

(z) Cl. 1, Sec. 25, Reg. XIII, 1816.
(a) Cl. 2, Ibid.
(b) S. U. Dy. 27th January 1855.
(c) Sec. 3, Act XVII, 1848.
(d) Sec. 4, Ibid.
(e) C. O. 31st July 1855. No.136, D.
(f) C. O. 30th July 1850. No.117, A.

47. The Plaintiff or Plaintiffs, and Appellant or Appellants, are the parties referred to in the said Act.(g)

Who are the parties meant by the Act.

48. The only stamp duty leviable under it is that mentioned in para 11.(h)

49. A Plaintiff is not entitled to a refund of stamp duty under Act XVII of 1848, in suits wherein Decrees have been passed upon Razeenamah, or in suits dismissed for default.(i)

50. Certificates under the above Act may be presented to Tahsildars, to be forwarded by them to the Collector, who may instruct the Tahsildar to pay the amount or not, as he might think proper.(j)

Certificates for refund may be presented to Tahsildar.

51. In all suits remanded by the Sudr Adawlut to a lower Court for reinvestigation and judgment *de novo*, from after the 1st of February 1853, in which the Sudr Adawlut may order the refund of stamp duty, the Court to which the suit may be remanded should draw the amount ordered to be refunded, from the Treasury of the Collector of the District, upon the application of the party entitled to such refund, or of his duly constituted Vakeel, to whom the Court should pay the same after obtaining a receipt from him upon stamped paper of the prescribed value.(k)

Refund in remanded cases.

52. Whenever an Appeal preferred to a Judicial Officer having appellate jurisdiction, from a decree passed by himself in any former capacity; or whenever such an appeal, pending in his Court at the time of his assuming charge thereof, has been forwarded by him, (in consequence of his being precluded from disposing of it himself,) to the Court to which, in ordinary cases, an appeal lies from his decision, the removal of the appeal to the higher Court should in no wise affect the stamp duty, which should be the same as if the Appeal had been tried by the Court to which it had been first preferred.(l)

Stamp duty not affected by removal of Appeal to higher Court;

53. Whenever any suit may have been removed from the file of a lower Court to that of a higher Court, in consequence of the Officer presiding over the former Court being a party,

Or by a similar removal of an original suit.

(g) C. O. 30th July 1850. No. 117, A.
(h) Ibid.
(i) S. U. Dy. 17th July 1856.
(j) S. U. Pro. 10th March 1849.
(k) C. O. 5th May 1853, No. 127.
(l) Cl. 3, Sec. 2, Reg. I, 1829.

or otherwise personally interested in the suit, the removal of such suit to the superior Court should in no wise affect the stamp duty, which should be the same as if the suit had been decided by the lower tribunal.(*m*)

Stamps in Pauper cases;

54. A Vakalutanamah executed by a Pauper Plaintiff should be on stamped paper;(*n*) but the Plaint, Reply or other Pleadings in Pauper suits may be written on plain paper.(*o*)

55. Objections to the admission of a party to sue in *formâ pauperis* should be written on stamped paper of the value specified in para 26.(*p*)

In Soldier's suits.

56. The Plaint in an original suit instituted by a Native Officer or Soldier is not required to be on stamped paper, provided that such suit has not originated in loans, or in pecuniary transactions of a commercial nature.(*q*) The value of the stamp from which the Plaintiff may be so exempted should be charged in the Decree on behalf of Government to the party cast, or to the parties respectively, in equitable proportions.(*r*)

57. The Mooktyarnamah executed by Native Officers and Soldiers in any suit or appeal need not be written on stamped paper.(*s*)

58. If any Native Officer or Soldier institute a suit in which he is not *bonâ fide* interested, or not interested to the extent alleged in the Plaint, for the purpose of enabling some other person to avail himself fraudulently of the above privilege in respect to exemption from stamp duty, such Native Officer or Soldier is liable to a fine not exceeding five times the value of the stamped paper which the party interested would have otherwise required for the institution of the suit, such fine being levied in the manner prescribed for the execution of Decrees.(*t*)

Not requisite in Appeals to Queen in Council.

59. No Stamp duty is payable in respect of any proceeding in any appeal, or in respect of any paper or copy of any paper necessary for an Appeal from any Court of the East India Company to the Queen in Council.(*u*)

(*m*) Cl. 4, Sec. 3, Reg. I, 1829.
(*n*) D. S. U. S. A. 12, 1852.
(*o*) Cl. 1, Sec. 4, Reg. VII, 1818.
(*p*) Cl. 7, Sec. 5, Ibid.
(*q*) Sec. 3, Act. XV, 1845.
(*r*) Sec. 4, Ibid.
(*s*) Cl. 2, Sec. 3, Reg. VIII, 1817,
(*t*) Sec. 5, Act XV, 1845.
(*u*) Act XI, 1839.

60. Suits tried by Village Moonsiffs, Village Punchayets, and by Collectors, are exempt from all fees and Stamp duty.(*v*)

61. In suits instituted before Military Tribunals, no document whatever should be refused on account of its not being written on stamped paper.(*w*)

Stamps on Bonds, &c.

62. Every Bond, Promissory Note, Bill of Exchange, Letter of Credit, or other obligation for the payment of money; every Receipt or Acquittance whereby any sum of money or demand may be acknowledged to have been paid, received, liquidated, discharged, accounted for, or in any manner satisfied; every Deed of Gift, sale, or other transfer of property, real or personal (excepting a Will);(*x*) every Lease, Deed of Mortgage, or other limited assignment of land; every Deed of contract, marriage settlement, partnership, agreement, security, or engagement, for a sum of money, or for property, exceeding the value of 64 Rs., which may be executed within the Provinces subject to the Presidency of Fort St. George, should be written on paper (or some other material) impressed with the Government Stamp, the value of which stamp should be regulated as follows:—

If the Bond or other instrument be for a sum exceeding 64 Rs., or if the value of the property transferred, or otherwise affected by it, exceed 64 Rs., and not exceed 125 Rs., the instrument should be executed on stamped paper of the value of 4 Annas:—

If above	125 Rs.	and not exceeding	250 Rs.	...eight Annas.
,,	250 Rs.	,,	500 Rs.	...one Rupee.
,,	500 Rs.	,,	1,000 Rs.	...two Rs.
,,	1,000 Rs.	,,	2,000 Rs.	...four Rs.
,,	2,000 Rs.	,,	5,000 Rs.	...eight Rs.
,,	5,000 Rs.	,,	10,000 Rs.	...sixteen Rs.
,,	10,000 Rs.	,,	20,000 Rs.	...thirty-two Rs.
,,	20,000 Rs.	,,	50,000 Rs.	...fifty Rs.
,,	50,000 Rs.	,,	1,00,000 Rs.	...one hundred Rs.
,,	1,00,000 Rs.			... one hundred and fifty Rs.

(*y*)

(*v*) Sec. 32, Reg. IV, 1816.
Sec. 13, Reg. V, 1816.
Sec. 11, Reg. XII, 1816.
Sec. 20, Reg. V, 1822.
Sec. 31, Reg. XIII, 1816.

(*w*) Sec. 31, Reg. VII, 1832.
(*x*) Sec. 4, Reg. II, 1825.
(*y*) Ibid.
Sec. 11, Reg. XIII, 1816.

63. Every Puttah and Cabooleyut, or other engagement contracted between landlord and tenant, and every Receipt or other acknowledgment for the payment of rent exceeding 64 Rupees; should be written on paper or other material bearing the prescribed stamp, supposing that such instruments relate to Lakhiraj lands.(z)

64. If for the execution of any of the above instruments, more than one roll be required, the value of the second and succeeding rolls need not exceed the lowest rate of stamp, (viz., 4 Annas,) provided the first, bear a stamp of the prescribed value.(a)

65. All authenticated copies of such documents, which may be prepared as legal vouchers, or to be filed or received in a Court of Judicature, should be written on stamped paper or cadjan, according to the rates prescribed for the originals.(b)

66. When they cannot be written out on stamped material of the same value as the originals, it will be sufficient that the total value of the stamps used for the purpose equals the amount of the prescribed stamp.(c)

67. Security Bonds for appearance, Security Bonds for the payment of eventual costs of suit, as well as other Security Bonds not being for a specific amount, and all Deeds of contract, partnership or agreement, and engagements of whatever nature, which may not relate to a specific sum or value, should be written on stamped paper, or other material of the value of one Rupee.(d)

68. In framing Agreements for monthly rent, the rules in regard to the preparation of Leases or other instruments relating to Lakhiraj lands should be observed.(e)

69. The Courts are prohibited from admitting in evidence, or receiving any Instrument required to be written on stamped paper or other material, which may not be executed on the

(z) Cl. 1, Sec. 12, Ibid.
(a) C. O. 17th January, 1832.
(b) Cl. 2, Sec. 12, Reg. XIII, 1816.
(c) C. O. 3d January, 1851.
(d) Cl. 3, Sec. 12, Reg. XIII, 1816.
(e) S. U. Pro. 16th January 1837.

prescribed stamp, unless the party presenting the same pays a penalty equal to ten times the amount of the stamp duty which would have been payable on such instrument in the first instance, if it had been prepared on paper or material bearing the prescribed stamp.(*f*) This rule applies also to Instruments for sums between 16 and 64 Rs., and to Wills executed between the 1st January 1809 and the 15th April 1825.(*g*)

Penalty on Exhibits required to be written on stamped paper, and not so written,

70. There is no penalty for the mere act of taking a Bond on unstamped paper. When a party may assert that the Bond was lost, but admit that it was not executed on the prescribed stamped paper, no fraud should be imputed to him.(*h*)

71. The Courts cannot legally demand a penalty on the transfer of a Bond by endorsement.(*i*)

72. Documents written on stamped material of insufficient value are admissible in a Court upon payment of penalty equal to ten times the amount of the prescribed stamp duty.(*j*)

and upon Instruments written upon insufficiently stamped paper.

73. An Instrument executed on a higher stamp than the prescribed one, is admissible without penalty.(*k*)

74. Instruments which ought to be on stamp, cannot be received as exhibits from a Pauper, without payment of penalty.(*l*)

75. When an Instrument may be admitted on payment of the prescribed penalty, the payment must be certified upon the Instrument, by the Court; and such Certificate renders the Instrument ever after admissible, in the same manner as if it had been duly stamped. The Certificate should specify the date and place of the payment of the penalty, and the amount and the name of the party by whom it was paid; a corresponding entry of such payment being made by the Court in a book kept for that purpose.(*m*)

Payment of penalty to be certified on Instrument.

(*f*) Cl. 1, Sec. 3, Reg. II, 1825.
(*g*) C. O. 24th January, 1828.
(*h*) S. U. Pro. 10th February 1837.
(*i*) S. U. Pro. 26th April 1847.
(*j*) C. O. 17th January 1832.
(*k*) C. O. 24th January 1828.
(*l*) S. U. Pro. 9th August 1841.
(*m*) Cl. 2 and 3, Sec. 3, Reg. II, 1825.

76. All Moonsiffs and Punchayets are required to observe the above rules, when receiving Exhibits in suits depending before them.(n)

Such payments when received by V. Moonsiffs and Punchayets to be remitted to D. Moonsiff,

77. In cases where the penalty on exhibits may be levied by a Village Moonsiff, or by a Village or District Punchayet, the amount should be remitted to the District Moonsiff, with a Memorandum of the date and place of payment, and the name of the party by whom it was made.(o)

who should forward all such penalties and those levied by himself, to Zillah Judge.

78. District Moonsiffs should remit all sums so received by them, and the amount of penalties levied by themselves, to the Zillah Judge, accompanied by a Memorandum of the date and place of payment and the name of the party by whom it was made. Corresponding entries of such payments should be made by the Zillah Judge, in a Book specially kept for that purpose.(p)

79. If, on the presentation of an Instrument bearing the prescribed certificate of payment of penalty, the Court see reason to believe the Certificate to be forged, a reference should be made to the Register of payments kept by the Zillah Court or Subordinate Court.(q)

Penalty not recoverable by party paying.

80. The creditor who sues must in all cases pay the penalty on instruments written on unstamped, or insufficiently stamped paper; and he cannot recover the same, by a fresh suit or otherwise, from the debtor.(r)

What Exhibits may be on plain paper.

81. The following documents are not required to be written on stamped paper:

Puttahs and Cabooleyuts, or other engagements between Landlords and Tenants; Receipts or other acknowledgments for the payment of rent, provided that all such instruments relate to Malgoozary lands;(s) Engagements to sub-rent Abkary privileges and farms, as well as Receipts and acknowledgments between Abkary renters and sub-renters;(t) Security Bonds executed by the sureties of Paupers;(u) Vakalutnamahs and Mookhtyarnamahs,

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(n) S. U. Dy. 15th June 1849.
Cl. 1, Sec. 35, Reg. VI, 1816.
Sec. 15, Reg. VII, 1816.
Cl. 1, Sec. 34, Reg. IV, 1816.
Sec. 15, Reg. V, 1816.
(o) Cl. 4, Sec. 3, Reg. II, 1825.
(p) Cl. 5, Ibid.
(q) Cl. 6, Ibid.
(r) S. U. Pro. 24th January 1828.
(s) Cl. 1, Sec. 12, Reg. XIII, 1816.
(t) Cl. 2, Sec. 9, Reg. I, 1820.
(u) S. U. Pro. 17th February 1840.

Arbitration Bonds, Security Bonds for appearance, as well as Security Bonds for the eventual costs, or for the performance of a Decree, or for staying or enforcing the execution of a Decree;(v) Wills, and Instruments executed since the 15th April 1825, where such Instruments may be for a sum of money, or value of property, not exceeding 64 Rs.(w)

82. Instruments executed in a Foreign Territory and private Letters are not subject to the Stamp Laws,(x) and may be received in evidence without the levy of any penalty thereon.(y)

Stamps for application for filing Exhibits,

83. No Exhibits should be filed in the undermentioned Courts, without an application being made for the purpose on stamped paper as follows :

In the Court of a Sudr Ameen, on paper of 4 Annas.

In the Court of a Sub Judge, or Principal Sudr Ameen, on paper of 1 Rupee.

In the Court of a Zillah Judge, or the Sudr Adawlut, on paper of 2 Rs.(z)

and for summoning witnesses,

84. No summons should be issued for the attendance of any witness in any original regular suit, or in any appeal regular or special, without an application being made for the issue of such summons, which application should be written on stamped paper of the value specified in the preceding para, according to the Court in which it may be delivered and recorded.(a)

85. In lieu of filing a separate application for the admission of each exhibit, and the attendance of each witness, one or more applications, or Lists, including any number of exhibits, and any number of witnesses, may be filed, provided that such Applications or Lists be written on one, two, or more sheets or rolls of stamped paper, the total value of which should correspond in amount with that of the stamped paper which would have been requisite had the Application for each exhibit or witness been written on separate stamped paper under the rule contained in the preceding two paras.(b)

(v) Cl. 2, Sec. 16, Reg. XIII, 1816.
(w) Sec. 4, Reg. II, 1825.
C. O. 24th January 1828.
(x) D. S. U. S. A. 3, 1828.
S. U. Dy. 25th January 1834.
(y) S. U. Dy. 10th September 1831.
(z) Cl. 1, Sec. 16, Reg. XIII, 1816,
(a) Sec. 17, Ibid.
(b) Sec. 18, Ibid.

but not requisite in Pauper cases.

86. Applications for receiving exhibits and summoning witnesses in Pauper Suits(c) as well as Security bonds from sureties of persons admitted to sue as Paupers need not be on stamped paper(.d)

Stamps for copies of Decrees,

87. Copies of the Decrees of the undermentioned Court should be furnished to parties on stamped paper as follows:

Copies of Decrees passed by Sudr Ameens on paper of 8 Annas.

Copies of Decrees passed by Subordinate and Assistant Judges, and P. S. Ameens on paper of 1 Rupee.

Copies of Decrees passed by Zillah Judges on paper of 2 Rs.

Copies of Decrees passed by the Sudr Adawlut on paper of 4 Rupees.(e)

88. In copies of Decrees written in English, or in any of the Native languages, each paper should contain 25 lines in large letters, written in the most legible manner.(f)

89. Copies of Decrees which may be prepared by the Courts abovementioned to remain with their own records should be written on unstamped paper of European manufacture, of the same size and description as the paper stamped for the copies of Decrees to be delivered to the parties.(g)

for Bills of sale,

90. A Bill of Sale for property sold in execution of a Decree should be on stamped paper according to the amount realized.(h)

for money Receipts.

91. District Moonsiffs should take stamped Receipts for monies recovered and paid through them, the value of stamp being regulated according to the scale laid down in para. 62.(i)

92. Authenticated Copies of Judicial proceedings, Accounts, Statements, Reports or other documents which individuals may require for use or reference, should be written on stamped paper of the value of eight annas.(j)

(c) Cl. 1, Sec. 7, Reg. VII, 1818.
(d) S. U Pro. 17th February 1840.
(e) Cl. 1, Sec. 22, Reg. XIII, 1816.
(f) C. O 28th June 1828, A.
(g) Cl. 2, Sec. 22, Reg. XIII, 1816.
(h) C. O. 16th April 1850, No. 116, B.
(i) S. U. Dr. 15th June 1849.
(j) Cl. 1, Sec. 22, Reg. XIII, 1816.

93. Summonses, Orders to Nazirs, and Depositions of witnesses are not required to be on stamped paper; but all certified copies of such papers furnished to the parties or their Vakeels should be on stamped paper.(*k*)

94. Copies of Deeds or Instruments under 64 Rupees, or of documents executed on stamps of two Annas, previously to the promulgation of Regulation II. of 1825, need not now be made on stamped paper for the purpose of being authenticated as legal vouchers.(*l*)

Copies of documents to be granted to parties on their furnishing stamped paper.

95. All persons interested in cases depending before, or decided by the Civil Courts, are entitled to receive authenticated copies of any orders passed in such cases on furnishing stamped paper according to para 87. With respect to applications for copies of proceedings, and for documents not falling within this rule, for the delivery of which no express permission has been made by the Regulations, the Courts possess a discretion either to comply with applications for copies, on sufficient cause being stated for granting them on stamped paper, or to allow them to be taken on any paper, or to refuse compliance when satisfactory cause may not be assigned for granting a copy, or allowing it to be taken, especially when the application may be from a person not a party in the case, nor immediately interested in it.(*m*)

But copies not on stamped paper inadmissible as evidence.

96. But all such copies not made on stamped paper of the prescribed rate, cannot be authenticated or received in evidence by any Court.(*n*)

What copies may be on plain paper.

97. Copies of proceedings and orders, accounts, statements, or other papers made for the purpose of being recorded in Court, or for transfer to other Courts or Public Offices, may be written on unstamped paper.(*o*)

Sheristadar should certify the correctness or otherwise of the stamps on documents.

98. Papers presented in Court should be immediately delivered to the Sheristadar, who should certify on the same day the correctness or otherwise of the stamps, and if certified by him to be correct, they should be filed on the record, otherwise returned to the party presenting the same; in either case

(*k*) C. O. 30th March 1810.
(*l*) C. O. 30th May 1829.
(*m*) C. O. 26th June 1823.
(*n*) Sec. 30, Reg. XIII, 1816.
(*o*) Cl. 3, Sec. 22, Ibid.

however the Court should satisfy itself that the stamp is, or is not correct.(p)

Penalty if Ministerial Officers file, or furnish copies of Documents not on prescribed stamp.

99. Any Ministerial Officer who may file in a Court of Judicature, without the written order of such Court, any Petition, Pleading or other document required to be written on stamped paper which may not have been written on the prescribed stamp; or who may furnish a copy of any paper or proceeding required to be written upon stamped paper, on any other paper than the prescribed stamped paper, is liable to dismission from office and to the payment of a fine to Government, equal to ten times the amount of the stamp duty which would have been payable if the prescribed stamped paper had been used.(q)

100. Whenever a Petition, Pleading, or other document which may not have been written on the prescribed stamp may be filed in a Court, or whenever it may appear that a copy of any paper or proceeding has been furnished on paper not bearing the prescribed stamp, the Court should call upon the Ministerial Officer by whom such Petition or other Document was filed, or by whom such copy had been furnished, to show cause why the prescribed fine should not be imposed upon him, and on his failure to shew good cause, should forthwith proceed to levy from him the penalty prescribed in the preceding para.(r)

101. The stamped papers used in the Zillah Courts are the same as were required by Regulation XIII. of 1816, to be used in the late Provincial Courts, excepting in cases where the Judges of the present Zillah Courts may exercise the jurisdiction of a Subordinate Court, as contemplated in Section 45, Act VII. of 1843, when of course the value of the stamp will be regulated by the nature of the functions they may be called upon to discharge.(s)

102. Copies of all Regulations in force regarding stamped materials should be furnished by the Zillah Judges to the District Moonsiffs within their jurisdiction.(t)

(p) C. O. 28th June 1828. B.
(q) Cl. 1, Sec. 29, Reg. XIII, 1816.
(r) Cl. 2, Sec. 7, Reg. V, 1831.
(s) S. U. Pro. 25th September 1843.
(t) Cl. 2, Sec. 35, Reg. VI, 1816.

SUBORDINATE JUDGE.

1. The Zillah Courts which existed previously to the enactment of Act VII. of 1843, have been substituted by Courts constituted according to Regulation I. of 1827. These latter Courts are presided over by Officers of the Covenanted Civil Service, who are designated Subordinate Judges.(u)

Constitution of his Court.

His designation.

2. Previously to entering upon the duties of his Office, a Subordinate Judge must make and subscribe a solemn declaration similar to that which Zillah Judges are required to make and subscribe.(v)

Solemn declaration.

3. All the provisions of the Regulations for the guidance of the Zillah Judges in their proceedings and decisions, and in matters relating to the discharge of their functions, whether ministerial or judicial, are generally applicable to the Subordinate Judges.

Rules for his guidance,

4. And the Subordinate Officers attached to the Courts of Subordinate Judges are subject to, and are to be guided by, the same rules as are established in respect to Officers of the same description employed in the Zillah Courts.(w)

and for his Subordinate Officers.

5. The orders passed on Miscellaneous Petitions presented to a Subordinate Judge are to be written in the current language of the District in which the Court is stationed; English translations of such orders being furnished on the special application of the parties presenting the Petitions.(x)

Language of his written orders on Petitions.

6. The Pleaders attached to the Zillah Court practise also in the Court of the Subordinate Judge (y)

Pleaders of his Court.

7. Subordinate Judges perform the duties of Register of Deeds, and take charge of the Estates of Europeans and others dying within their jurisdiction.(z)

He registers Deeds and takes charge of Estates.

(u) Reg. 1, 1827.
Act. VII, 1843.
(v) Cl. 1, Sec. 3, Reg. I, 1827.
(w) Sec. 9, Reg. I, 1827.
(x) Cl. 3, Sec. 15, Reg. XV. 1816.
(y) S. U. Pro 21st August 1843.
(z) S. U. Pro. 9th October 1843.

SUDR AMEEN.

Who are eligible.

1. No person whatever, is, by reason of place of birth, or by reason of descent, incapable of being a Sudr Ameen.(a)

Who may regulate the number.

2. The number of Sudr Ameens may be augmented or diminished by the Sudr Adawlut with the sanction of the Governor in Council.(b)

Who may appoint and dismiss.

3. The appointment and removal of Sudr Ameens rest with the Court of Sudr Adawlut.(c)

Solemn declaration.

4. Every Sudr Ameen should, previously to entering upon the execution of the duties of his Office, make and subscribe a solemn declaration, according to the form No. 1 of the Appendix to Regulation VIII of 1816, before the Judge of the Court to which he may be attached.(d)

Amenability to the Courts for official acts.

5. Every British born subject of the Queen or descendant of a British born subject who may be appointed a Sudr Ameen, is, in respect of all acts done by him as a Sudr Ameen, liable to the same proceedings, as well Criminal as Civil, and amenable to the same tribunals, as if he were not of British birth or descent.(e)

Cannot receive fees.

6. A Sudr Ameen cannot receive any fee or commission for judicial duties performed by him.(f)

Court station.

7. The Sudr Ameens should hold their Courts at the Station where the Zillah Court is held in a room belonging to that Court house, or in such convenient place as that Court may direct.(g)

Pleaders.

8. The Zillah Court to which a Sudr Ameen may belong should assign to such Sudr Ameen's Court, an adequate number of authorized Pleaders to practise therein.(h)

(a) Sec. 3, Act. XXIV, 1836.
(b) Sec. 1, Act. XXIX, 1836.
(c) Sec. 2, Reg. XI, 1802. Cl. 2, Sec. 3, Reg. VII, 1822.
(d) Sec. 5, Reg. VIII, 1816.
(e) Sec. 4, Act. XXIV, 1836.
(f) Sec. 2, Act. XXIX, 1836.
(g) Sec. 6, Reg. VIII, 1816.
(h) Sec. 10, Ibid. S. U. Pro. 1st August 1843.

9. The Sudr Ameens should themselves investigate the suits pending before them in open Court, and not allow their Officers, servants or dependents or any other person to interfere therein.(*i*) Investigation of suits.

10. All causes filed by, or referred to, a Sudr Ameen, should be pleaded, either by the parties in person, or by an authorized Pleader of the Court.(*j*) Who may plead therein.

11. In the trial of all suits before them, the Sudr Ameens should be guided by the same rules as are prescribed for the trial of suits before the Zillah Judges.(*k*) Upon all doubtful points, the Sudr Ameens should apply for instructions to the authority to whom in the matter involving doubt they may be in immediate subjection.(*l*) Rules for guidance.

12. All processes and orders by Sudr Ameens should be addressed to the same Officers of the Zillah Court to whom similar processes and orders are addressed by the Zillah Judge; but the Sudr Ameen should have no further control over, nor power of punishing them for misconduct. This must be done only by the Zillah Judge, the Sudr Ameen reporting to the Judge whenever he sees occasion for doing so.(*m*) Processes and orders.

13. Sudr Ameens are prohibited from giving judgment in any case before the Decree is drafted.(*n*) Judgment.

14. Sudr Ameens are liable to a civil action in the Zillah Court for corruption, extortion or for any oppressive or unwarranted act of authority; and upon proof of the charge to the satisfaction of the Judge, he should cause the offender to pay such damages and costs to the party injured, as may appear to be equitable.(*o*) Liability to civil action;

15. Sudr Ameens are also liable to a criminal prosecution for extortion or other acts of oppression committed by them in the discharge of their duty, and, on conviction before the Session Court, are subject to fine and imprisonment proportionate to the nature and circumstances of the case.(*p*) and to criminal prosecution.

(*i*) Sec. 9, Reg. VIII, 1816.
(*j*) Sec. 10, Ibid.
(*k*) Sec. 14, Ibid.
(*l*) S. U. Pro. 6th November 1843.
(*m*) S. U. Pro. 27th March 1844.
(*n*) Sec. 4, Reg. VI, 1828.
(*o*) Sec. 13, Reg. VIII, 1816.
(*p*) Ibid.

Proviso.

16. A Sudr Ameen cannot however be prosecuted for want of form, or for error in his proceedings or judgment, nor can any process be issued against a Sudr Ameen who may be charged with extortion or any oppressive or unwarranted act of authority, unless the Zillah Judge be previously satisfied by sufficient evidence that there is reason to believe the charge to be well founded.(q)

When he may be suspended,

17. A Sudr Ameen guilty of any gross act of misconduct is liable to be suspended from office by the Zillah Judge, who should report the circumstances of the case without delay for the final determination of the Sudr Adawlut.(r)

and dismissed.

18. A Sudr Ameen is liable to dismissal from office for borrowing money from the suitors of his Court;(s) for declaring in Court judgments drawn up under dictation by his ministerial subordinates, and recording their purport in the Diary previously to their preparation in his own handwriting;(t) or for failing to report each instance in which he may avail himself of the 5 days leave allowed under C. O. No. 98.(u)

Cannot trade.

19. A Sudr Ameen cannot engage in any mercantile speculation.(v)

20. The acquisition of landed property by a Sudr Ameen is subject to certain restrictions, already stated.(w)

Cases of disqualification for office to be reported to Sudr Court.

21. The several Zillah Judges should report to the Sudr Adawlut any cases of Sudr Ameens who may, from age or other cause, be disqualified for the active and efficient performance of their duties.(x)

Liable to removal from station.

22. A Sudr Ameen is liable to be removed by the Sudr Adawlut from one station to another, whenever it may deem such removal advisable.(y)

23. The arrival at, departure from, and return to, their stations, of Sudr Ameens should, on all occasions, be reported to the Sudr Adawlut by the Zillah Judge.(z)

(q) Sec. 13, Reg. VIII, 1816.
(r) Sec. 16, Act. VII, 1843.
Sec. 6, Reg. III, 1833.
(s) C. O. 3d February 1846. No. 103.
(t) C. O. 20th April 1844. No. 80.
(u) C. O. 14th October 1845. No. 98.
(v) S. U. Pro. 28th December 1843.
(w) *Vide page* 260.
(x) E. M. C. 17th April 1851.
(y) S. U. Dy. 20th October 1852.
(z) S. U. Dy. 15th October 1844.

Special local jurisdiction to be settled by Zillah Judge when there may be more than one Sudr Ameen in a Zillah.

24. Whenever there may be more than one Sudr Ameen attached to the Court of a Zillah Judge, and not having any special local jurisdiction, it is the duty of such Judge to settle and determine the special local jurisdiction of each of such Sudr Ameens; and each of such Sudr Ameens should be empowered to take cognizance of all suits within the competency of a Sudr Ameen to entertain, provided the landed or other real property to which the suits may relate be situated, or in all other cases, the cause of action have arisen, or the Defendant at the time the suit commenced be residing as a fixed inhabitant, within the limits of such local jurisdiction.(*a*)

(*a*) Sec. 3, Act IX, 1844.

SUDR COURT.

1. The East India Company's highest Court of Civil Judicature in the Presidency of Fort St. George, is the Sudr Court.(b)

Constitution of Court.

2. The Sudr Court consists of a Chief Judge, (being a Member of Council, but not the Governor nor the Commander in Chief,) and of three Puisne Judges, selected from among the Company's Covenanted Civil Servants.(c)

3. The Governor in Council may, whenever he may deem it expedient, appoint additional Judges to the Sudr Court.(d)

Designation of Judges.

4. The Judges of the Sudr Court are designated simply as Puisne Judges, and take their seats in Court according to their seniority in the service.(e)

Solemn declaration.

5. The several Judges of the Sudr Court, previously to entering upon office, make and subscribe a solemn declaration according to the form prescribed in Section 2, Regulation IV. of 1802.(f)

Who appoints the Registers.

6. The Register of the Sudr Court, the Deputy and the Assistant Registers are Covenanted Civil Servants of the Company, and are appointed by the Governor in Council. Previously to entering upon the execution of the duties of their respective offices, they are required to make and subscribe a solemn declaration before one or more Judges of the Court, according to the form prescribed in Section 6, Regulation VII, of 1802.(g)

Sittings.

Adjournment.

7. The Court holds its sittings at Madras, and is empowered to make such reasonable adjournments as may be deemed expedient, consistently with the business.(h)

(b) Act VIII, 1842.
(c) Sec. 3, Reg. III, 1807.
(d) Sec. 4, Reg. III, 1825.
(e) E. M. C. 6th January 1852, No. 9.
(f) Sec. 5, Reg. IV, 1806.
(g) Sec. 3, Reg. XII, 1802.
(h) Sec. 3, Reg. V, 1802.
Sec. 3, Reg. III, 1816.

8. It is also empowered to permit from time to time the Judges of the Zillah, and Subordinate Zillah Courts, and the Sudr Ameens, to adjourn their respective Courts.(*i*)

9. But such occasional adjournments of the Sudr Court and of the lower Courts must not collectively exceed two months in each year.(*j*)

10. The ordinary sitting of the Court is held by one or more of the Puisne Judges. The Chief Judge attends and presides when a difference of opinion between the Puisne Judges, or where any special case or business may, in his judgment, require his doing so. In the event of a difference of opinion arising when the three Puisne Judges are in Court, the view of the majority determines the question. But if a difference of opinion arise when only two Puisne Judges are present, the question is postponed for adjudication until the other Puisne Judge attends; a special sitting of the Court being summoned for that purpose, or the question brought forward at the next sitting of all the Puisne Judges.(*k*)

Register's duties.

11. After the rising of the Court, the Register procures all acts of the Court to be executed, his Deputy and Assistant, and the Native Officers attached to the Court assisting him in this duty.(*l*)

12. The Register, the Deputy and the Assistant Registers are to perform all such official acts as may be prescribed to them by the Judges.(*m*)

13. Exclusive of his duties in the Criminal Department, the Register of the Sudr Court has to record the Resolutions and orders of the Court on the Petitions of parties complaining of the proceedings and decisions of the lower Courts in matters not appealable; to prepare the Court's Decrees in appealed causes; to conduct its correspondence with the Government and with the lower Courts &c.; to record the observations of the Court upon the Quarterly Returns from the lower Courts; to prepare the Annual Civil Reports to be laid before Government

(*i*) Sec. 3, Reg. III, 1816.
(*j*) Sec. 3, Reg. III, 1816.
C. O. 23d November 1810. No. 72.
(*k*) Sec. 7, Reg. IV, 1806.
(*l*) Sec. 11, Reg. XII, 1802.
(*m*) Sec. 5, Ibid.

exhibiting the operations of the Sudr Court and the various Courts subordinate to it; and to prepare the Records of causes appealed to the Queen in Council.(n)

14. In the performance of these duties, the Register is assisted by the Deputy and the Assistant Registers.(o)

15. The Register has the control and management of the Office Establishment, with which the Judges have no concern.(p)

16.) All letters to the Court should be addressed to the Register.(q)

17. The Sudr Court will not offer an opinion in any case likely to come before it in appeal,(r) nor give extra judicial constructions of the Regulations.(s)

Judge to sign Decree.

18. Every Decree of the Sudr Court should be signed by the Judges present at the passing of it. All other orders of Court, as well as all Processes issued from it, are signed and issued by the Register, under such instructions as may be prescribed by the Judges.(t)

How orders to be made.

19. No rule, order, proceedings, or decree can be made but on Court days, but they need not be made in open Court.(u)

20. The orders passed on Petitions presented to the Sudr Court are written in English.(v)

21. The Decrees of the Sudr Court are published monthly.(w)

Court may receive and refer to Subordinate Zillah Court original suits, and complaints

23. The Sudr Court is empowered to receive any Original suit or complaint which may be cognizable in any Subordinate Zillah Court, and to command the Judge of such Court, by a Precept under the seal of the Sudr Court and attested by the Register, to receive the suit or complaint, and to proceed to hear and determine it, provided that it has been previously prov-

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(n) S. U. Dy. 15th January 1836.
(o) Ibid.
(p) S. U. Dy. 24th January 1838.
Ibid, 15th September 1845.
(q) F. U. Dy. 10th December 1832.
Ibid, 16th November 1836.
(r) S. U. Pro 11th September 1845.
(s) F. U. Dy. 17th October 1845.
(t) Sec. 3, Reg. IV, 1806.
(u) Sec. 3, Reg. V, 1802.
Sec. 1, Act. XXXIII, 1854.
(v) Cl. 4, Sec. 15, Reg. XV, 1816.
(w) S. U. Pro. 12th June 1849.

ed to their satisfaction the Judge refused or omitted to proceed in it, and that the complainant applied to the Zillah Court and that such Court omitted or refused to command the Judge to receive and proceed in it under Section 7, Regulation IV, of 1802.(x)

23. The Sudr Adawlut is also authorized to receive Petitions respecting suits or matters that may be pending, or have been decided, in any Subordinate Zillah Court; and provided it be proved to their satisfaction that the Petition was presented to the Judge of such Court, and that he refused, or omitted to receive it, and proceed on it, and that the complainant applied to the Zillah Court, and that such Court omitted or refused to command the Judge to receive and proceed in it, the Sudr Court is empowered to issue a Precept under the seal of the Court, and attested by the Register, commanding the Judge to receive the Petition and proceed respecting it according to the Regulations.(y) also Petitions.

24. The Sudr Adawlut may further receive any Appeal from a decision of a Subordinate Zillah Court which may be cognizable in any Zillah Court, and command such Zillah Court by a Precept under the seal of the Court, and attested by the Register, to receive the Appeal and proceed to hear and determine it; provided proof has been previously made to their satisfaction that the Zillah Court omitted or refused to receive and proceed in it.(z) Court may receive and refer appeals to Zillah Court;

25. The Sudr Adawlut can likewise receive Petitions, respecting Appeals or matters that may be depending, or have been decided, in any Zillah Court; and provided it has been proved to their satisfaction that the Petition was presented to the said Court and that the Judge refused or omitted to receive it, the Sudr Court is empowered to issue a Precept under the seal of the Court, and attested by the Register, commanding the Judge to receive the Petition and proceed respecting it according to the Regulations.(a) also Petitions.

26. If it should at any time appear to the Sudr Adawlut that from the pressure of business in any of the Zillah Courts,

(x) Cl. 1, Sec. 4, Reg. V, 1802.
(y) Cl. 2, Ibid.
(z) Cl. 1, Sec. 5, Ibid.
(a) Cl. 2, Ibid.

Court may call up from Zillah Court, and try certain original suits.

suits amounting to ten thousand Rupees and upwards, (being the amount fixed for Appeals to the Queen in Council,) can be more conveniently or expeditiously tried in the first instance by the Sudr Adawlut, than by the Zillah Court before which they may be depending, it is competent to the Sudr Adawlut to order the transfer of all, or any of such suits, from the Zillah Court to the Sudr Court. In the transfer and trial of such suits, the Sudr Adawlut should be guided by the same provisions as are prescribed for the conduct of the Zillah Courts regarding the trial of Original suits exceeding ten thousand Rupees in amount or value.(*b*)

Rules for guidance in trial of suits and appeals.

27. In matters which the Sudr Adawlut may be empowered to try in the first instance, and also in Appeals that may be preferred to the Court from decisions of the Zillah Courts (except as to hearing witnesses and receiving evidence,) the Court should proceed in the same manner, and with the like powers and authority, and subject to the same restrictions, limitations and exceptions, as are prescribed to the Zillah Courts.(*c*)

Punishment for contempt,

28. If any person be guilty of contempt of the Sudr Adawlut in open Court, the Court may immediately punish the offender by fining him in a sum not exceeding five hundred Rupees, or by committing him to custody in the Jail of the Zillah nearest to the Presidency for a term not exceeding six months.(*d*)

for recusant Witnesses,

29. If a witness duly summoned by the Sudr Court do not attend, or do refuse to give evidence in the prescribed manner, the Court may impose on such witness a fine not exceeding five hundred Rupees, and commit him to the Jail of the Zillah nearest the Presidency, until he consents to give his evidence, If the witness do not pay the fine, the Sudr Court may direct him to be kept in confinement for a further term not exceeding three months.(*e*)

for Perjury.

30. If it appear to the Sudr Court that any person has been guilty of wilful and corrupt perjury in any matter depending before it, the Court may immediately commit the offender to custody and send him to the Subordinate Criminal Court of the Zillah

(*b*) Sec. 2, Reg. XV, 1816.
(*c*) Sec. 7, Reg. V, 1802,
(*d*) Sec. 2, Act. XV, 1835.
(*e*) Cl. 2, Sec. 1, Ibid.

nearest the Presidency in order to his being brought to trial before the Session Court in such Zillah; and such person must be dealt with in the same manner as if the perjury had been committed within the limits of the local jurisdiction of such Session Court.(f)

Cases of negligence or misconduct in any Covenanted Judicial Officer to be reported to Government.

31. It is the duty of the Sudr Court to report to the Governor in Council all instances of wilful neglect of duty, or aggravated misconduct by a Covenanted Servant of the Company employed in any of the Courts, whether such neglect or misconduct may have been reported to the Sudr Court by the Zillah Court, or may otherwise appear from the proceedings and papers before the Sudr Court. But if the case appear to the Court to involve an error of judgment only, or a slight default, for which an admonition from the Court may be deemed a sufficient correction, the Sudr Court in the former case is authorized to notice the error for the information and guidance of the party who may have committed it; and in the latter case to advise him of his default, and admonish him accordingly.(g)

Power to appoint, dismiss, and regulate the number of Sudr Ameens;

32. It is competent to the Sudr Court to appoint and dismiss Sudr Ameens,(h) and with the sanction of the Governor in Council to augment or diminish at discretion the number of such Officers within the Presidency.(i)

to remove Uncovenanted Judicial Officers from their stations;

33. The Sudr Court is empowered to direct the occasional removal of Sudr Ameens and District Moonsiffs from one station to another, whenever it may be deemed advisable by them; and, when such removal may be necessary in the case of a Principal Sudr Ameen, the Court is required to bring such case to the notice of Government.(j)

to appoint and remove District Moonsiffs;

34. No person can officiate as a District Moonsiff, nor can a District Moonsiff be removed from office, without the sanction of the Sudr Court.(k)

35. The Sudr Court is empowered to exercise a general control over all the lower Courts in preventing the appointment

(f) Sec. 3, Act XV, 1835.
(g) Sec. 39, Reg V, 1802.
(h) Sec. 2, Reg. XI, 1802.
Cl. 2, Sec. 3, Reg. VII, 1822.
(i) Sec. 1, Act. XXIX, 1836.
(j) S. U. Dy. 20th October 1852.
(k) Sec. 6, Reg. VI, 1816.
Cl. 4, Sec. 7, Ibid.

of improper and unfit servants, and the unjust and capricious removal of those employed in the Judicial department.(*l*)

to prescribe forms of periodical Reports, &c.

36. The Sudr Court is subject to the orders of Government, from time to time, as circumstances may require, to prescribe the forms, and fix the periods, for the transmission of all Reports, Registers or other statements, to be furnished by the Civil Courts, European and Native, of the Presidency.(*m*)

37. In cases for which no specific rules may exist, the Sudr Court is to act according to justice, equity, and good conscience.(*n*)

(*l*) C. O. 11th March 1830.
(*m*) Sec. 3, Reg. IX, 1828.
(*n*) Sec. 30, Reg. V, 1802.

SUITS, REGULAR.

SECTION I.

PLEADINGS.

Who should complain and answer.

1. No Plaint is to be received but from a Plaintiff, nor any answer to a Plaint but from the Defendant, or their respective Vakeels duly empowered. Nor is any person to be permitted to do any act, or to be heard *vivâ voce* in any stage of a cause, excepting the Plaintiff or Defendant, or their respective Pleaders or Witnesses.(*o*)

Language of Pleadings.

2. Every Plaint, Answer, Reply and Rejoinder (these constituting the Pleadings allowed in the Courts of the East India Company) must be written in the language and character of the country wherein the Court may be held.(*p*) But it is competent to a European or a Native Judge to accept any translation of a Pleading or Miscellaneous Address, which may have been prepared by the party from whom such Pleading or Address may emanate. The responsibility of acting thereon rests with the Functionary accepting the translation, who, as a matter of duty, should ascertain that it is correct.(*q*)

They should be signed, and registered.

3. All Pleadings are to be signed and numbered, and dated in the order in which they may be received, by the Judge; and are to be registered in a book, by a Native Officer of the Court.(*r*)

What Plaint should contain.

4. The Plaint is to contain the name and the residence of the party complained against; the value of the object sued for, (rated according to the rules prescribed for valuation of land and of other objects,) (*s*) the position, boundaries, extent and nature of tenure, if land be the object of the suit; the precise matter of complaint; and the time when the cause of action arose.(*t*)

(*o*) Sec. 2, Reg. III, 1802.
(*p*) Sec. 3, Ibid.
(*q*) S. U. Dy. 18th November 1844.
(*r*) Sec. 3, Reg. III, 1802.
Sec. 18, Reg. VI, 1816.
(*s*) *Vide page* 319.
(*t*) R. P. S. U. Cl. 1.

5. In stating the precise matter of complaint the Plaint is to set forth no more than is necessary to exhibit the nature of the Plaintiff's right and title to what he may demand from the Defendant, and the circumstances which have laid the Defendant under obligation to satisfy this demand.

Thus, where the suit may be on a bond, it suffices to say that the Defendant on such a day borrowed of Plaintiff such a sum of money and executed the bond; or that such an one borrowed the money and executed the bond, the Defendant being the son and heir of the said person; and that the time for discharge of the bond having expired on such a day, demand was made on the Defendant, but the money was not paid.

Or, where the suit is for land and the proprietary right is in dispute: that the said land was derived by Plaintiff of old from his ancestors, or (if a recent acquisition) was purchased by Plaintiff or such an one, being his father &c., from such a party, at such a time; and that on such a day the Defendant gained over the Plaintiff's tenant and took possession of the land, and on restitution being demanded, set up the assertion that he is the proprietor of the said land.

Or, where the object is to oust a mortgagee or tenant: that on such a day the said land was mortgaged (or leased) by Plaintiff to the Defendant, that on such a day the term of the mortgage (or lease) having expired, Plaintiff sought restitution of the land (tendering in the case of a mortgage the mortgage money), but that Defendant has refused to restore the land; it not being necessary in suits of this description to set out the Plaintiff's title, his claim upon the Defendant resting upon a specific transaction, whether of lease or mortgage, which is all that need be stated.(u)

6. All narratives of past transactions not immediately connected with the matter which has led the party into Court, all accounts or acts and dealings with the Defendant or others, whether occurring before or after the matter which forms the immediate groundwork or cause of the suit, and all mention of the circumstances, documents or persons by means whereof the truth of

(u) R. P. S. U. Cl. 2.

Plaintiff's claim is to be established, are to be excluded from the Plaint, as forming no part of the purpose of the Plaint, as defined by law, which is simply that the Plaintiff should describe as succinctly as possible "the precise matter of his complaint against the Defendant," and not also his means of substantiating that complaint.(v)

7. But it will be necessary in a case where the Plaintiff's claim may not have been raised within the period of 12 years, that the particular circumstances, with dates, should be set forth in the Plaint which serve to prevent the bar of the statute of limitation taking effect against the claim; for not only must the claim be set forth in the Plaint, but it must be made apparent therein that it is an actionable one.(w)

8. Framed according to the above rules, Plaints should not ordinarily cover more than half or one roll of stamped paper.

Notice to Defendant.

9. In the Notice to be served upon the Defendant giving him intimation of the suit, the nature of the demand raised against him by the suit is to be succinctly stated, and a day is to be specified not exceeding twenty days from date of Notice, on or before which, the Defendant is to deliver in his Answer.(x)

Proclamation.

10. On the Defendant failing to conform to the said Notice, or to the Proclamation consequent thereon should the notice not have been served on him, the Court is to proceed at once to investigate and decide the suit *exparte*.(y)

Up to what time Answer may be received.

11. But should the Defendant appear at any time before evidence has been received for the Plaintiff, and justify his default, he may be allowed further limited time to put in his Answer.(z)

12. The Courts should not require the Defendant's appearance merely, and then give him time to file his Answer.(a)

(v) R. P. S. U. Cl. 3.
(w) Ibid, Cl. 4.
(x) Ibid, Cl. 5.
(y) Ibid, Cl. 6.
(z) Ibid, Cl. 7.
(a) Ibid, Cl. 8.

Answer.

13. The Answer is to be drawn up in the same succinct manner as the Plaint, and as rigidly confined to the immediate subject matter of the suit.(*b*)

14. When however objections exist to the suit that the value in issue has been understated, that the Plaintiff is under personal disability to sue, that the suit has not been laid against the right parties, or against all who should have been included therein, that the subject matter thereof has already been adjudicated on, that the suit is barred by the statute of limitation, or that in any way it cannot be proceeded with, these exceptions should be briefly stated with the necessary particulars of sums, persons, and dates &c., and all such objections should be set forth prominently at the outset of the Answer, that the suit in respect to them may be brought to a speedy issue.(*c*)

15. Such of the above preliminary objections to the suit as may not involve want of jurisdiction in the Court, are not to be held fatal to the suit, but the Plaintiff is to be allowed opportunity to remedy the defects of his Plaint.(*d*)

16. In proceeding to answer specifically to the Plaintiff's demand upon him, the Defendant is briefly to state the facts on his side opposed to the truth of the demand, with particulars of time, place &c.; but he is not to describe the evidence on which he rests for proof of his assertions, nor to enter into any argument.

For example, where the suit may be for recovery on a bond, the Defendant may simply deny that he ever borrowed the money from the Plaintiff or executed the bond; or he may plead that on such a day he discharged the bond; or that by such another transaction held with Plaintiff, the debt has been cancelled in part, or in whole.

Or, where the suit may be for land, if the Defendant dispute the title of the Plaintiff; he is to describe his own title with the same brevity enjoined upon the Plaintiff in setting forth *his* title in the Plaint; or if a mortgage be in question, he may answer that the time for redemption has elapsed, or that the sum of the mortgage is higher than that named in the Plaint,

(*b*) B. P. S. U. Cl. 9.
(*c*) Ibid, Cl. 10.
(*d*) Ibid, Cl. 11.

or that he never had transaction with the Plaintiff respecting the land but has derived it from such an one. And the same, if the suit be brought on the ground of a lease, that the term of the lease has not elapsed, or that the circumstance to lead to forfeiture of the lease has not occurred, or that he holds the lease of another than Plaintiff.(e)

17. A Defendant cannot be fined for refusing to answer.(f)

Reply.

18. The Reply is to contain nothing but a simple acknowledgment or denial of the facts set forth in the Answer, and is to be put in on the next Court day after that on which the Answer may have been received.(g)

Rejoinder.

19. The Rejoinder is to contain no more than a denial of the truth of the Reply, so far as this may be disputed, and is to be put in on the same day on which the Reply is received.(h)

20. When a Defendant in an original suit may refuse or neglect to file a Rejoinder within the period limited, the Court, after recording such neglect or refusal, should proceed in the trial of the suit in the same manner as if a Rejoinder had been filed.(i)

21. No Reply or Rejoinder is required to be filed in suits before District Moonsiffs.

No Petitions relative to suit receivable.

22. The Courts are not to receive or file any Petitions, having reference to the merits of the suit, that may be presented by the parties or their Vakeels. All applications relative to the conduct of the suit should be made orally and recorded in the Diary.(j)

23. Where the Plaint and Answer are kept within their legitimate bounds as above described, and the Reply and Rejoinder are confined to the simple admission or denial they are to convey, no difficulty can occur in having these latter Pleadings put in within the periods, narrow though they be, allowed by the law, and the Courts are, on no account, to extend the said periods, the law having left them no discretion so to do.(k)

(e) R. P. S. U. Cl. 12.
(f) S. U. Pro. 31st December 1810.
S. U. Pro. 17th March 1848.
(g) R. P. S. U. Cl. 13.
(h) Ibid, Cl. 13.
(i) Cl. 2, Sec. 7, Reg. XV, 1816.
(j) R. P. S. U. Cl. 14.
(k) Ibid, Cl. 15.

24. The Courts are to be careful not to admit any Pleading not strictly drawn up according to law as above described. But the primary stamp bearing the duty substituted for the institution fee, which may have been made use of for any Plaint returned as irregular, is to be accepted as sufficient provision of such stamp duty, when the amended Plaint may be put in, and the amended Plaint may be drawn up on stamped paper of the value of the secondary stamps required in the suit. Where Pleaders may fail in their duty by presenting Pleadings irregularly drawn up, the Courts should not fail to notice their conduct, first by warning, and when it may be found by repeated transgressions that warnings fail of effect, by fine or dismissal.(*l*)

(*l*) R. P. S. U. Cl. 16.

SUITS, REGULAR.

SECTION II.

TRIAL.

PRELIMINARY HEARING.

1. On the completion of the Pleadings, the Courts, on a given day, should take into consideration any preliminary objections to the suit such as are instanced in para 14 of the preceding Section, and proceed, after holding such examination of the same as may be necessary, to dispose thereof, affording the Plaintiff the opportunity of remedying such defects as may be found to exist in his Plaint, or dismissing the suit according to the nature of the objections established, and this without entering upon the merits of the suit. Such dismissals are to be by summary order, against which summary appeal will lie.(*m*)

1ST HEARING ON THE MERITS.

2. On completion of the Pleadings, and after the disposal of such preliminary objections to the suit as may have been raised, or otherwise may appear, the Courts are to affix a Notification in the Court house giving the parties eight days' notice of the suit being taken up for hearing on its merits.(*n*)

Pleadings to be read in Court.

3. On the occasion of this hearing, the Pleadings are to be read and such explanation required from the parties as may be necessary to enable the Courts to ascertain the precise points in dispute. Admissions made on either side will be noted so as to lead the parties to the narrowest possible issue, and the same are to be put on record. The Court will then proceed to subjoin on the same paper, the points in issue, whether relating to matters of law or of fact, subjecting the same, before placing them on the record, to discussion by the parties in order that any error or omission therein, that they may be able to indicate, may be rectified.(*o*)

Points to be recorded.

4. The points in dispute thus to be placed on the record, are to embrace only such primary material allegations as go to form the Plaintiff's claim, or, on the other hand, as may serve to de-

(*m*) R. P. S. U. Cl. 17.
(*n*) Ibid. Cl. 18.
(*o*) Ibid. Cl. 19.

monstrate its untenability. Subordinate circumstances, affording means of judging of the truth or otherwise of the said primary allegations are not to be entered among the points in contest, neither is any description of evidence, documentary or oral, to be adverted to therein, as requisite to be produced in support of statements made on either side.

For example, in a suit on bond; it will suffice that the Plaintiff be called upon to prove (1) the execution of the bond, and (2) that the Defendant stands indebted to him in the sum sued for. He need not be told that he must produce the bond, and the witnesses who attested it, or that he should prove part payment and promises of final adjustment; it being left to the Plaintiff to judge for himself as to the evidence he may deem requisite to establish that the Defendant does stand indebted to him, under the particular bond on which his suit is brought.(p)

2D HEARING.

Exhibits and Lists of Witnesses.

5. After the recording of the points in dispute between the parties, the Courts are to fix a day for the production of the exhibits and list of witnesses on either side. This should be done at the close of the proceedings on the day that the points are recorded, and the same should be notified at once to the parties then present, and entered on a paper to be affixed in the Court-house. Care should be taken, in deciding upon the said day, to ascertain from the parties, supposing them to be present, that there is no impediment to the production of the said exhibits and lists on the day in question, and not less than eight days' time should be given for the purpose, unless otherwise agreed on.(q)

6. If either party fail to produce his exhibits and lists of witnesses within the said day, specified as above, and do not satisfactorily account for the default, he should be subjected to fine, and a second day fixed for the said purpose; and, should he incur a further delay, the fine is to be repeated, (or preferably) the suit, if the failure be on the Plaintiff's side, should be struck off after a lapse of six weeks from the period of the first default, or, if on the Defendant's side, the investigation should proceed without further delay by examination of the Plaintiff's evidence.(r)

7. No evidence oral or documentary is to be received, but

(p) R. P. S. U. Cl. 20.
(q) Ibid. Cl. 21.
(r) Ibid. Cl. 22.

such as may be relevant to some point in dispute as recorded by the Court for establishment.(s)

8. On the day on which the exhibits are produced, those on either side should be shown to the opposite party and witnesses should be summoned in proof of such exhibits only as may be in dispute between them. The admissions made on this occasion are to be placed on record.(t)

SUMMONING THE WITNESSES.

9. The Court should then proceed to fix a day for the examination of the witnesses. This should be done on the day on which the exhibits and lists of witnesses have been received and in concert with the parties then present. The day should be sufficiently distant to allow of all necessary process for securing the attendance of the witnesses, being executed, so as to afford all reasonable probability that the witnesses will be produced on the day in question. The said day for attendance is to be entered in the summonses issued to the witnesses.(u)

10. Parties to suits may, on due grounds being made to appear, be summoned as witnesses at the requisition of other parties in the said suits, unless cause be shown by the party so cited against his being thus summoned; and when produced, such parties are to be examined in all respects as any other witnesses.(v)

11. The application so to summon a party should be made at the time that the lists of the witnesses are put in, and the said party should be examined, together with the other witnesses,(w)

12. If a Plaintiff when so summoned fail to attend and give evidence, and is unable to justify such failure, his suit may be at once dismissed; or if a Defendant so fail, his pleas in defence may be rejected without receiving consideration, and the suit decided *exparte*.(x)

13. Ample time having been afforded for the production of the witnesses in the manner enjoined in para. 9, the Courts should ordinarily not postpone the hearing and decision of suit

(s) R. P. S. U. Cl. 23.
(t) Ibid. Cl. 24.
(u) Ibid. Cl. 25.
(v) Ibid. Cl. 26.
(w) Ibid. Cl. 27.
(x) Ibid. Cl. 28.

because of the non-attendance of witnesses. On the failure, however, of a party in a suit to attend and give evidence, who may have been summoned for the purpose, due attention is to be paid to the wish of the party citing him to have his evidence secured, and postponement of the hearing or decision should be made for such purpose at his request, unless there be good reason to refuse compliance with such request.(y)

14. On cause appearing, warrant may be issued to compel the attendance of a witness, without previously attaching the property of such witness.(z)

15. The period fixed, pursuant to para 9, for the attendance of witnesses should be sufficiently remote to allow of the said process of warrant being applied for and carried out in the interval, if needed, and the said process should issue on the party citing the witness, certifying that he is necessary to his case, and that he has reason to apprehend he will not attend but upon compulsion. The issue of the process, need not be contingent on the witness's failure to conform to the summons.(a)

3D OR FINAL HEARING.

16. On the day appointed as above for the attendance of the witnesses the Courts should examine such of them as may be present, and then proceed to give judgment in the suit.(b)

17. Should cause arise to prevent the examination of the witnesses on the said day, or should the examination not be brought to a close on the said day, another day, as proximate as practicable, should be fixed for the hearing. The practice of taking up cases at indefinite times, and of examining witnesses as they appear, without regard to a day appointed for the attendance of all, is strictly interdicted.(c)

Cross-examination of witnesses.

18. After a witness has been examined by the party who called him, he may be cross-examined by the other side; after which the party who called the witness should be allowed to re-examine him with respect to any statements made by him in his cross-examination; but not on any new matter.(d)

(y) R. P. S. U. Cl. 29.
(z) Ibid. Cl. 30.
(a) Ibid. Cl. 31.
(b) Ibid. Cl. 35.
(c) Ibid. Cl. 36.
(d) Ibid. Cl. 38.

19. The statements of the witnesses are to be recorded in a brief form as a narrative, and not by question and answer, unless special cause for recording question and answer in any particular intance may appear, as when a witness is guilty of prevaricating.(e)

20. After the close of the examination of the witnesses, the parties are to be allowed, if they see fit so to do, to comment on the evidence given, pointing out what facts are established thereby in their favour respectively and stating objections to the evidence on the other side. The Plaintiff should first be heard, and then the Defendant should be permitted to answer him and state his case; after which, the Plaintiff may reply to what may have fallen from Defendant. These pleadings are to be oral and conducted methodically, and are not to be allowed to extend themselves unduly. No record need be kept of what passes beyond that the Judical officer, before whom the hearing is held, may make such notes thereof as he may deem necessary for his own use.(f) Oral pleadings.

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21. A Court, of whatever rank, should try the suits depending before it, according to the order in which they are filed and numbered.(g) Order of trial.

22. The exceptions to this rule are

Soldiers' suits.(h)

Suits involving disputes of a religious nature.(i)

Suits in which property may be attached to secure execution of the Decree.(j)

Suits instituted by under-farmers or ryots under Regulation XXVIII of 1802.(k)

23. The Courts superior to a District Moonsiff's also possess a discretionary power to bring on any suit for trial before its turn, whenever they may see special reasons for so doing, which

(e) R. P. S. U. Cl. 39.
(f) Ibid. Cl. 40.
(g) Sec. 20, Reg. III, 1802.
Sec. 25, Reg. VI, 1816.
(h) Cl. 1, Sec. 7, Reg. VIII, 1817.
(i) C. O. 21st November 1837. No. 49.
(j) Sec. 6, Reg. II, 1811.
(k) Sec. 41, Reg. XXVIII, 1802.

reasons should be in all such cases recorded at large upon the record of the trial.(*l*) But District Moonsiffs are not competent, of their own authority, to bring any particular suit to a hearing out of the regular order of the file. They can only do so, with the previous sanction of the Zillah Judge.(*m*)

24. The foregoing restrictions do not of course apply to suits disposed of without an investigation.(*n*)

Plaint may be rejected without trial.

25. If a Plaint, on its own showing, appear to be purely groundless and vexatious, the Court can pass a decision rejecting it as such, without calling upon the Defendant to put in an Answer, and can further impose a fine on the Plaintiff.(*o*)

26. Variance between the statement of the Plaint, as the grounds of action, and the facts proved and admitted on the trial, must be held to be fatal to the Plaintiff's claim.(*p*)

27. A Court is competent to strike out of a suit the names of individuals sued, who obviously have no interest or concern whatever in the matter at issue.(*q*)

28. A Court cannot insist on investigating a claim formally abandoned by the Plaintiff.(*r*)

29. The disposal of a suit without recording points for the Defendant or examining his witnesses, was approved by the Sudr Adawlut, as, from the *nature* of the case, such a proceeding was unnecessary, the Plaintiff's claim having been fully proved by public documents (not to be questioned), and the evidence of Public servants.(*s*)

30. But ordinarily a Court cannot omit to examine any witness cited by either party, unless the party himself dispenses with the evidence of such witness.(*t*)

31. Where a suit for damages from a breach of custom, which required certain marks of respect to be shown to the Plaintiff in a Hindoo Pagoda, had been summarily dismissed by the

(*l*) Sec. 20, Reg. III, 1802.
(*m*) C. O. 4th April 1825.
(*n*) Ibid.
(*o*) S. U. Pro. 21st May 1849.
(*d*) Ibid, 27th September 1849.
(*q*) Ibid, 17th August 1844.
(*r*) Ibid, 30th June 1845.
(*s*) Ibid, 8th December 1845.
(*t*) S. U. Dy. 7th August 1821.
C. O. 25th March 1838.

Court of original jurisdiction, without calling upon the Defendant to file his Answer, the Sudr Adawlut ruled that the lower Court was bound, under Section 5, Regulation II, of 1802, to entertain the suit, and to dispose of it, after an investigation into the merits.(u)

Claims to be sued for separately.

32. When two or more distinct claims are comprised in one suit, the Judge should not proceed to try such suit, but should reject it at once. Several and unconnected causes of action should be kept distinct from each other, and form the subject of separate suits, but when obligations originally separate and distinct, have, by the course of transactions between the parties, become blended together, the whole should be comprised, and disposed of, in one suit. The application of this principle will of course rest with the Judge before whom such suits are brought.(v)

Case in which a second suit for same property may be instituted.

33. Where a suit had been withdrawn by the Plaintiff, the Sudr Court held that the Plaintiff was not debarred from filing a second suit for the recovery of the same property, provided he could show that the terms of the compromise upon which the former suit had been withdrawn, were, by fraud or bad faith, departed from, especially if such compromise subjected the parties to future legal consequences.(w)

Set-off may be pleaded and allowed.

34. When there are mutual debts between the Plaintiff and Defendant, a set-off may be pleaded: (the Defendant setting up a demand of his own to counterbalance that of the Plaintiff:) such debts may be of different nature, but they must be mutual. The instance given in Blackstone's Commentaries (Vol. III. p. 304,) is, "If the Plaintiff sue for ten pounds due on a note of hand, the Defendant may set off nine pounds due to himself for merchandize sold to the Plaintiff, and in case he pleads such set-off, must pay the remaining balance into Court. Where a set-off is admissible, the parties are alternately Plaintiff and Defendant, so that if the cross-demand, or any part, be within the statute of limitation, that objection may be replied to it, in like manner as it may be pleaded in bar to the declaration.

(u) S. U. Pro. 10th February 1845.
(v) S. U. Pro. 9th December 1806.
Ibid, 8th July 1830
S. U. Dy. 8th May 1837.
S. U. Pro. 15th April 1839.
Ibid, 21st October 1847.
(w) Ibid, 9th March 1846.

If at the time of the action brought, a larger sum was due from the Plaintiff to the Defendant, than from him to the Plaintiff, the action is barred." These rules were introduced into the law of England to remedy the inconvenience at common law that "if the Plaintiff was as much, or even more, indebted to the Defendant, than the Defendant was indebted to him, yet he had no method of striking a balance."(x)

Exparte trial.

35. On the Defendant failing to answer, after notice duly served on him, it is the duty of the Court to proceed to try the cause *exparte*, and after examining the Plaintiff's evidence to give judgment on the merits of the case as established by that evidence, in the same manner as if the Defendant had appeared and answered to the Plaint. Suits therefore upon which *exparte* decisions are passed, are generally decided upon the merits of the case, for they are usually either so obviously just, as to admit of no defence, or so groundless, as, on the Plaintiff's own showing, to render any defence unnecessary.(y) The trial *exparte* is a proceeding required of the Court, and no application for such trial is needed from the Plaintiff.(z)

36. Where a Defendant wilfully fails to answer, and an *exparte* decision is passed against him, he cannot afterwards be permitted to have a further hearing of the suit.(a)

37. If a Defendant, after receiving Notice requiring him to answer, remove to Madras, the suit may be tried *exparte*.(b)

38. Where a Decree may be passed without reference to the rights of Government to the property awarded, the suit should not be revived, but the Collector should, by a Miscellaneous Petition, claim the property on the part of Government, upon which, the execution of the Decree should be suspended, and the Decree-holder be left at liberty to file a suit against the Collector, in the event of his considering himself aggrieved.(c)

Settlement by oath.

39. Civil suits may be adjusted by oaths voluntarily proposed and taken by the parties. The Court should pass its Decree accordingly, and no appeal can be made therefrom.(d)

(x) S. U. Pro. 5th February 1840.
(y) C. O. 15th February 1830-B.
(z) S. U. Dy. 27th March 1828.
(a) S. U. Pro. 19th January 1846.
(b) S. U. Dy. 17th March 1828.
(c) S. U. Pro. 10th July 1846.
(d) Sec. 27, Reg. VI, 1816.
S. U. Pro. 13th July 1840.

In what suits opinions of Native Law Officers should be obtained.

40. In suits regarding succession, inheritance, marriage, caste, and all religious usages and institutions, the Mahomedan law with respect to Mahomedans, and the Hindoo law with regard to Hindoos, are to be considered as the general rules by which the Courts are to form their decisions. The Law Officers are to expound the law of their respective persuasions. The parties in suits of the above nature may submit law opinions, quoting or referring to authorities in support of their claims.(*e*)

41. A Mahomedan Law Officer is attached to the Zillah Court, but the office of Hindoo Law Officer in those Courts has been virtually abolished: When therefore questions of Hindoo law have to be expounded, they must be referred to the Pundits of the Sudr Adawlut.(*f*)

42. A statement of the facts on which the question of law may arise, should be made out in writing and signed by the Judge. A blank is to be left for the answer of the Law Officer, on the same paper on which the question is stated, or on a paper firmly annexed to it. The answer is to be attested with the signature of the Law Officer, and the dates on which questions may be stated to him, and the answers given, are to be specified.(*g*)

43. In suits of the nature alluded to, District Moonsiffs are to obtain an exposition of the law, Hindoo or Mahomedan, from the Law Officers, through the Zillah Judge, to whom they are to submit a written abstract of the case for the purpose.(*h*) The Zillah Judge is to refer the cases or questions to the Law Officers, whose answers thereto are to be transmitted by the Zillah Judge to the District Moonsiff.(*i*)

44. Zillah Judges may refer cases and questions, whether arising in their own Courts, or in the Courts of the Sudr Ameens and District Moonsiffs within their jurisdiction, to the Law Officers of any other Zillah, or superior Court, through the Judge of such Court; and the same cases or questions may, if deemed advisable,

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(*e*) Cl. 1, Sec. 16, Reg. III, 1802.
(*f*) Ibid.
Sec. 24, Act VII, 1843.
S. U. Pro. 11th November 1845.
(*g*) Sec. 17, Reg. III, 1892.
(*h*) Cl. 4, Sec. 62, Reg. VI, 1816.
(*i*) Sec. 4, Reg. II, 1828.

be referred by the Zillah Judge originally making the reference, to the Law Officers of any two or more Zillah Courts.(j)

45. The reference of the whole Record of a suit for the opinion of a Law Officer is irregular.(k)

What Notification should be made by D. Moonsiffs in suits relative to the inheritance of, or succession to, landed property.

46. In all suits before District Moonsiffs relative to the inheritance of, or succession to, landed property, they are to affix, in some conspicuous part of their Court-houses, a written notification of the claim preferred, with a requisition to all persons who may have any claim to the property sued for, to prefer the same within a limited period, and their decisions are to include all claimants to the property in question, who, according to the law of the parties, whether Mussulman or Hindoo, have a just and legal title to share therein.(l)

What inquiry should be made in certain suits in which East Indians are concerned.

47. It has been ruled that disputes regarding the division of property or regarding any other matter involving a legal difficulty in which East Indians are concerned, must be disposed of under the provisions of Section 17, Regulation II, of 1802. The course to be pursued under those provisions would be (in all cases in which both parties are East Indians, or in cases in which one of the parties being an East Indian, would be entitled to the benefit of his own particular law, if he had one,) for the Court to ascertain, by evidence, the particular customs and usages of that class of people touching the matter at issue, and to give judgment accordingly.(m)

48. In cases coming within the jurisdiction of the Courts, for which no specific rule may exist, the Courts are to decide according to justice, equity and good conscience.(n)

Correspondence relative to suits prohibited.

49. The Courts cannot correspond by letter with parties in suits, process or matters before them, or coming within their cognizance. If a party in a suit, or a person amenable to the jurisdiction of a Court have any matter to represent to it, he is either to appear in the Court in person and represent the matter in writing, himself, or by an authorized Pleader of

(j) Sec. 2, Reg. III, 1828.
(k) S. U. Pro. 23d February 1831.
Ibid, 23d December 1831.
(l) Cl. 2. Sec. 62, Reg. VI, 1816.
(m) S. U. Dy. 14th July 1828.
Ibid, 3d September 1844.
(n) Sec. 17, Reg. II, 1802.

the Court. The Court is to pass such order upon the representation as may appear to it proper, consistently with the Regulations, and to direct a copy of the order to be delivered to the person making the representation, or to his Pleader, under the seal of the Court and attested by the signature of the Judge.

50. The Judges of the lower Courts are also prohibited from corresponding by letter with the Zillah Court respecting any cause or matter before them, or upon any matters whatever, on which they may not be specially empowered so to correspond. Whenever a Judge of a lower Court may have occasion to communicate to the Zillah Court any information that may be required from him by the higher Court, or which he may deem it necessary to submit to such Court respecting any matter or cause that may be before him, he is to certify it to the Court by a writing under his special seal and signature.(o)

51. The Zillah Courts are likewise prohibited from corresponding by letter with the Judges of the lower Courts, respecting any cause or matter before them, or upon any matters whatever on which they may not be specially empowered so to correspond. When they may have occasion to issue an order to the Judge of a lower Court, or require information from him, on the subject of any suit or matter before them, the Zillah Court is to issue a Precept, under its seal and the signature of the Judge, commanding the lower Court to execute the order, or requiring it to furnish the information; and the Judge to whom the Precept may be directed is to perform the exigence of it, or return good and sufficient reason why he has not done it.(p)

52. The Courts cannot try any suit to recover any sum of money or valuable thing alleged to be won on any wager, or entrusted to any person to abide the event of any game, or on which any wager is made.(q) What suits cannot be tried.

53. No Judge, of whatever rank, can sit on the trial of any cause in which he may be directly or indirectly a party, or may be otherwise personally interested; neither can he sign a Decree passed in such cause by the Court of which he is a Judge.(r)

(o) Sec. 20, Reg. II, 1802.
Sec. 6, Reg. V, 1802.
(p) Sec. 9, Reg. IV, 1802.
(q) Act. XXI, 1848.
(r) Cl. 1, Sec. 3, Reg. I, 1829.

54. Every Judge should, whenever a suit in which he may be directly or indirectly a party, or may be otherwise personally interested, may be instituted before him, or be referred to him, or be depending in his Court when he takes charge thereof,—forward the Record to the Court to which, in ordinary cases, an appeal lies from his decisions.(s)

55. When a District Moonsiff may, under the preceding para. forward to a Zillah Judge a suit instituted in his Court, in which he is directly or indirectly a party, or otherwise personally interested, the Judge may refer it for trial either to a Sudr Ameen, or another District Moonsiff.(t)

56. When a Zillah Judge may, under Section 54, Regulation VI of 1816, call up any cause that may be depending before a District Moonsiff, he may refer it for trial to the Subordinate Judge, Principal Sudr Ameen, Sudr Ameen or another District Moonsiff of the Zillah. He cannot himself investigate it. But it has been enacted that a Zillah Judge may withdraw suits instituted in the Court of a Principal Sudr Ameen or Sudr Ameen and try them himself, or refer them for trial to any subordinate Court, competent in respect to the value of the suit.(u)

Punishment for contempt of Court,

57. If any person be guilty of contempt of Court in open Court, or of undue arrogations of the authority of the Court in his own cause, or of illegal exertions of judicial authority in his own cause, the Court is immediately to punish the offender by fining him in a sum not exceeding 200 Rupees, and by keeping him in custody until the fine be paid. The Courts are to regulate the amount of such fine according to the situation and circumstances in life of the offender; and the person committed to custody may be liberated, when the Court which committed him considers that the confinement has been sufficient for the punishment of the offence; but no person can be so kept in custody for a term exceeding two months.(v)

and for using menacing gestures or otherwise obstructing justice.

58. 'All persons whatever, whether generally amenable to the Courts of the E. I. Company or otherwise, using menacing gestures or expressions, or otherwise obstructing justice in the presence of any of these Courts, inferior or superior, are liable to

(s) Cl. 2 and 3, Ibid.
(t) Sec. 19, Act. VII, 1843.
(u) Sec. 18, Ibid.
Sec. 2, Act IX, 1844.
S. U. Pro. 16th October 1843.
(v) Sec. 22, Reg. III, 1802.
Act. VI, 1836.

be fined by the Court whose proceedings are obstructed, to any amount not exceeding 200 Rupees, or in case such fine be not paid, to be imprisoned for any period not exceeding one month. An Appeal from the award of punishment in such cases, lies, if preferred within one month, to the Court which in all other cases an Appeal may be preferred from the decisions of the Court imposing the fine; and any person amenable to Her Majesty's Supreme Court may be indicted, as for a misdemeanor in any of the cases aforesaid, if no proceeding have been had against him in the Court where he committed the offence, but not otherwise.(w)

59. The provisions of the above para. are also applicable to cases that were dealt with by District Moonsiffs under Section 40, Regulation VI of 1816, rescinded by Section 1, Act XIX, of 1855.(x)

60. And to British subjects guilty of contempt of Court.(y)

61. But not to cases of witnesses merely refusing to give evidence (z) or to other cases of *negative* obstruction.(a)

NOTE.—*This subject might be advantageously read in connection with Section* 1 *of* "*Decrees,*" *which treats of the principles by which the Courts should be guided in coming to a decision on causes before them.*

(w) Sec. 1, Act XXX, 1841.
(x) C. O. 9th January 1856, No. 137.
(y) F. U. Pro. 31st October 1854.
(z) F. U. Pro. 27th August 1851.
(a) Ibid, 26th October 1844.

SUITS, SPECIAL.

SECTION I.

PAUPER SUITS.

Who may sue as Paupers.

1. Persons unable by reason of their poverty to defray the expenses of a law suit are admitted to sue as Paupers before the Sudr Adawlut, Zillah Judges, Subordinate Judges, and Principal Sudr Ameens.(*b*)

Who may not.

2. But a person who voluntarily divests himself of property, or refuses to take possession of it, can have no title to sue as a Pauper.(*c*)

Sudr Ameens and D. Moonsiffs cannot try Pauper suits, unless referred by Zillah Judge.

3. Sudr Ameens and District Moonsiffs are prohibited from allowing any party in a suit to plead before them in *formâ pauperis*,(*d*) but the Zillah Judge may, at his discretion, refer to the Sudr Ameens and District Moonsiffs within his jurisdiction, such Pauper suits admitted by him as may, with reference to the value of the cause of action, be cognizable by those Officers.(*e*)

What suits cannot be instituted in *formâ pauperis*.

4. No person can be admitted to sue as a Pauper if the cause of action do not exceed 10 Rupees,(*f*) or if the claim be for damages on account of slander, abusive language, assault or personal injury.(*g*)

5. Suits for the recovery of pecuniary penalties incurred by any breach of the Regulations are admissible as Pauper suits.(*h*)

Rules for the admission of persons to plead as Paupers.

6. Every person desirous of being admitted to plead as a Pauper in an original suit should submit his application under the following rules.(*i*)

7. The applicant should address himself to one of the constituted Pleaders of the Court in which he is desirous of suing, and the Pleader, if he be willing to undertake the conduct of

(*b*) Sec. 3, Reg. VII, 1818.
(*c*) S. U. Pro. 18th March 1843.
(*d*) Cl. 3, Sec. 12, Reg. VI, 1813.
C. O. 28th February 1855, No. 184. I.
(*e*) Cl. 2, Sec. 3, Reg. IV, 1825.
(*f*) Sec. 2, Ibid.
(*g*) Cl. 1, Sec. 4, Reg. VII, 1818.
(*h*) Sec. 2, Reg. IV, 1825.
(*i*) Cl. 1, Sec. 5, Reg. VII, 1818.

the suit should, after receiving a Vakalutnamah from the Pauper, on stamped paper,(*j*) draw out a statement containing a declaration of the nature, extent and grounds of the demand, and the names of the parties intended to be sued. This statement should be signed by the applicant and have annexed to it a declaration to be signed by the Pleader to the effect that he has attentively considered the applicant's case, and carefully perused the documents produced to him in support of it, and that he is of opinion the suit is (or is not) sustainable,(*k*) such opinion being in all cases accompanied by a statement of the grounds on which it is formed.(*l*)

Statement of cause of action to be drawn out by Pleader, with his opinion of merits of suit.

8. If the opinion of the Pleader be that the case is sustainable, the applicant should present to the Court a declaration according to the form A in the Appendix to Regulation VII of 1818, having annexed to it a true and perfect Schedule of the property, real and personal, of which he is possessed, with the value thereof. The declaration and Schedule should be subscribed by the applicant, and be read in Open Court, and sworn to or solemnly affirmed by the said applicant. And if any person taking the oath or affirmation thereby commit wilful perjury, and be convicted thereof, he is liable to incur the penalties directed by the Regulations to be inflicted for the crime of perjury.(*m*)

If Pleader consider suit sustainable, applicant to present a declaration on *oath*, or affirmation, with a Schedule of property.

9. It is competent to the Court, after considering the grounds of the Pleader's opinion, whether against, or in favor of, the claim of the party wishing to sue in *formâ pauperis*, either to admit the applicant so to sue, or to reject his application for that purpose.(*n*)

Court may overrule Pleader's opinion.

10. Whenever the Court may, or may not, admit a party to sue in *formâ pauperis*, the grounds of such resolution should be recorded: but no appeal is allowed therefrom.(*o*)

12. After the declaration and Schedule have been sworn to, or solemnly affirmed, the Court should fix a day on which to admit the applicant to institute his suit as a Pauper, unless good cause be shown against his admission. The day so fixed should be sufficiently distant to admit of the production of evi-

Proceedings for admitting suit.

(*j*) D. S. U. S. A. 12, of 1852.
(*k*) Cl. 2, Sec. 5, Reg. VII, 1818.
(*l*) Sec. 4, Reg. IV, 1825.
(*m*) Cl. 4, Sec. 5, Reg. VII, 1818.
(*n*) Cl. 2 and 3, Sec. 5, Reg. IV, 1825.
(*o*) Cl. 4, Ibid.

unless applicant's statement and schedule be invalidated.

dence by the adverse party to invalidate the statement of the applicant. The Court should, immediately after filing of the statement and Schedule, cause a copy thereof to be affixed in some conspicuous place in the Court Room, and issue a Notice to the party complained against, which Notice should specify the nature and amount of the demand, and the day on which the applicant will be admitted to enter his suit as a Pauper, unless good cause be shown to the contrary.(*p*)

12. It is competent to the Pleader who has drawn out the application, as well as to the party intended to be sued, to show cause against the applicant being admitted to sue as a Pauper.(*q*)

13. Objections to an alleged plea of poverty should be written on stamped paper. The names of the witnesses, who are to prove facts alleged in such objections should be mentioned therein; and if the witnesses so named are not in attendance, the Court should summon them on an early day.(*r*) It is not however imperative on women or others of such rank and caste as are by the usages of the country exempted from appearing in Courts of Justice, to appear therein for the purpose of qualifying as Paupers: such persons may appear by an accredited Agent.(*s*)

14. On the day fixed, the Court should proceed to hear and determine upon all objections that have been entered by the party intended to be sued, or by the Pleader retained by the applicant, either specially to the truth of the Schedule exhibited by the applicant, or generally to his admission to the benefit of the Pauper law,—the decision thereon by the Court being in all cases final.(*t*)

15. Under the preceding four paras, the opposite party is entitled to be heard, solely and exclusively, on the point of the extent of the property of the Pauper applicant, and not at all upon the merits of the Pauper's claim.(*u*)

(*p*) Cl. 5, Sec. 5, Reg. VII, 1818.
(*q*) Cl. 6, Ibid.
(*r*) Cl 7, Ibid.
(*s*) Cl. 8, Ibid.
(*t*) Cl. 9, Ibid.
(*u*) S. U. Pro. 16th September 1839.

16. If no objections be made to the admission of the applicant to sue as a Pauper, or if the objections made be deemed insufficient, the Court should take into consideration the amount and value of the property sworn to, or solemnly affirmed, and if of opinion that the applicant could not defray the probable costs of suit without being reduced to great distress, the Court should admit him to institute his suit as a Pauper.(*v*)

17. A Pauper Plaintiff may be dispaupered at any period of the suit prior to the Decree, on proof that he was possessed of sufficient property to defray the costs of the suit without distress.(*w*)

18. A party not a Pauper Plaintiff in the Original Suit, may be admitted to defend in appeal as a Respondent in *formâ pauperis*.(*x*)

Pauper should find Nazirzamin security

19. Every person admitted to sue as a Pauper should, before being permitted to file any Pleading, find two good and sufficient sureties for his appearance, whenever his attendance may be required by the Court. The security bond should be executed on unstamped paper and correspond with the form B in the Appendix to Regulation VII of 1818.(*y*) The above sureties should not be required to make a deposit of money, any more than sureties for costs; their personal security is to be taken on the Nazir's certifying to their possessing property sufficient to answer the judgment.(*z*)

20. The copy of the Decree as well as copies of Orders or Proceedings which a Pauper suit or may be required to take, should be furnished on unstamped paper.(*a*)

21. A Court should proceed for the recovery of any sums due by the sureties of a Pauper under the terms of the security bonds, in the same mode as it is directed to proceed in executing Decrees.(*b*)

22. Whenever a Court, before whom a Pauper suit may have been instituted, may, by its Decree, declare the suit to be vexatious or litigious, it is competent to that Court to adjudge

(*v*) Cl. 10, Sec. 5, Reg. VII, 1818.
(*w*) S. U. Pro. 26th June 1844.
(*x*) C. O. 1st December 1836. No. 36.
(*y*) Sec. 6, Reg. VII, 1818.
S. U. Pro. 2d January 1851.
(*z*) C. O. 14th October 1839. No. 60.
(*a*) Cl. 1, Sec. 7, Reg. VII, 1818.
(*b*) Cl. 2, Sec. 9, Ibid.

Litigious Paupers may be fined and imprisoned.

the Pauper to pay a fine not exceeding 200 Rupees, and to be imprisoned until such fine be paid, provided the time of imprisonment do not exceed six months, at the end of which period, or of such shorter period as the Court may have fixed in commutation for the fine, the Pauper should be released, provided always that no sum be received in payment of the fine until the whole of the fees and costs of suit which may have been decreed against the Pauper have been paid.(c)

23. The Courts are empowered to assign one of their constituted Pleaders to act on behalf of any person to present his original application, or to prosecute any original suit under the provisions of the Pauper Law.(d)

24. The rules above contained are applicable only to regular suits, and not to summary actions.(e)

For Pauper Appeals, see p.p. 14 *and* 46.

(c) Sec. 8, Reg. VII, 1818.
(d) Sec. 12, Ibid.
(e) Sec. 13, Ibid.

SUITS, SPECIAL.

SECTION II.

SOLDIERS' SUITS.

Provisions of certain Regulations modified.

1. Such parts of the Regulations as prohibit the Courts from corresponding by letter with parties in depending suits, or direct that no Pleading be received in any civil cause, except from the parties or their authorized Pleaders, or require generally that depending causes be brought to trial according to the order of the file, are subject to the following modifications.(*f*)

Appointment of Attorney to conduct suit.

2. Whenever a Native Officer or Soldier on the Military Establishment of this Presidency may be desirous of instituting a regular or summary suit in any of the established Courts of Civil Judicature, and may not be able to obtain a furlough or leave of absence for the purpose of superintending or conducting such suit in person, he may execute a Mookhtyarnamah or Power of Attorney, drawn up according to the form No. 1 in the Appendix to Regulation VIII of 1817, authorizing and appointing any member of his family, or other person, to institute and carry on the suit, and to perform all acts in the original trial of the cause, and eventually in appeal, in the same manner as if the party were himself personally present and consenting.(*g*)

The Mookhtyarnamah to be on plain paper, and countersigned by Commanding Officer,

3. Such Mookhtyarnamah is not required to be written on stamped paper, but should be executed by the Native Officer or Soldier in the presence of the Commanding Officer of the Corps or Detachment to which he may belong, who should countersign the same in testimony of its having been voluntarily executed.(*h*)

who should transmit it to the Court.

4. The Mookhtyarnamah so executed should be transmitted by the Commanding Officer under cover of a public letter

(*f*) Sec. 2, Reg. VIII, 1817.
(*g*) Cl. 1, Sec. 3, Ibid.
(*h*) Cl. 2, Ibid.

drawn up in the form No. 2 of the same Appendix, addressed to the Judge of the Court in which the suit is to be instituted, and upon the receipt of such letter, a Notice should be issued by the Court for the purpose of procuring the attendance, either personally or by a constituted Pleader, of the person nominated in the Mookhtyarnamah.(*i*)

Refusal or inability of Mookhtyar to act, to be communicated to Court.

5. If such Mookhtyar refuse to attend the Court in person, or by a constituted Pleader, or decline to undertake the trust, or having undertaken it, subsequently die, or be prevented by any sufficient cause from discharging the duty confided to him, the Court should cause information of the same to be communicated to the Native Officer or Soldier, by an Extract from its Proceedings enclosed in an official letter to be addressed to the Commanding Officer of the Corps.(*j*)

Mookhtyarnamah to be filed.

6. If the appointed Mookhtyar attend the Court in person or by a constituted Pleader, and consent to undertake the duty confided to him, the original Mookhtyaranamah should be deposited in the Court, and should form part of the record of the cause. The suit should be instituted, tried and determined in conformity with the general rules in force for the institution and trial of other similar suits, provided, however, that in all cases where the Native Officer or Soldier who may be the principal in the suit, may not be himself present at the time of its decision, an authenticated copy of the Decree written on unstamped paper, should be transmitted by the Court to the Commanding Officer of the Corps or Detachment, for communication to the Native Officer or Soldier.(*k*)

Trial of suit.

Communication of Decree to party if not present in Court.

Rules to be observed with a view to obviate *exparte* trials.

7. To ensure the due communication to all Native Officers or Sepoys of the summons or other notice of the institution of suits against them so as to prevent as far as possible, such suits from being brought to trial *exparte*, the Plaint or Petition of Appeal, should contain a declaration that the Defendant or Respondent is a Native Officer or Soldier, and all Plaintiffs or Appellants who may knowingly and intentionally omit to make such statement are liable to be fined in such sum as the Court, before whom such Pleadings may be filed, may deem equitable, not exceeding one-fourth of the stamp duty in each

(*i*) Cl. 3, Sec. 3, Reg. VIII, 1817.
(*j*) Cl. 4, Ibid.
(*k*) Cl. 5, Ibid.

case; and the Plaintiff or Appellant should further state in his Plaint or Petition of Appeal, to the best of his knowledge or belief, the particular Regiment or Corps to which such Native Officer or Sepoy may belong, or in the event of his being unable to specify the same, then it will be the duty of the Court before whom the suit is filed, to endeavour to ascertain the point.(*l*)

Notice to be sent to Commanding Officer.

8. A Notice in the usual form, together with a copy of the Plaint or Petition of Appeal on unstamped paper, enclosed in an official letter drawn up according to the form No. 3 of the Appendix alluded to, should be then transmitted by the Court to the Commanding Officer of the Corps, for the purpose of being communicated to the Native Officer or Soldier against whom the suit may have been instituted. A similar Notice should be issued, when omitted in the first instance from ignorance of the Defendant's being a Native Officer or Soldier attached to a regular Corps, if at any subsequent period during the trial of the suit it should appear to the Court, that the Defendant or Respondent is a Native Officer or Soldier as above described.(*m*)

who should cause it to be served.

9. The Commanding Officer should, if practicable, cause a Notice to be served on the party to whom it is addressed, and should then return it to the Court from whom it issued, with the written acknowledgment of the party endorsed thereupon, together with the prescribed Mookhtyarnamah, if the party should have appointed an Attorney to defend the suit in his behalf. If, from whatever cause, the Notice transmitted to the Commanding Officer cannot be served upon the Native Officer or Soldier, to whom it is addressed, it should be returned by the Commanding Officer to the Court from whom it was received, with information of the cause which had prevented the service of it. In such case of non-service of process, the Court should make such further reference, or adopt such other measures in order to the due service of the process, as may appear to be proper and consistent with the Regulations.(*n*)

Communications to be made by Commanding Officer when

10. When a Native Officer or Soldier may obtain a furlough for the purpose of instituting or defending a civil suit in any Court

(*l*) Cl. 1, Sec. 4, Reg. VIII, 1817.
(*m*) Cl. 2, Ibid.
(*n*) Cl. 3, Ibid.

leave of absence may be granted to Native Officers or Soldiers to conduct their suits.

he should be furnished by the Commanding Officer of the Corps or Detachment with an official letter addressed to the Judge of the Court in which the suit is to be tried. Such letter should be drawn up according to the form No. 4 of the Appendix aforesaid, but should not give cover to any Petition, nor contain any statement or explanation of the merits or circumstances of the case.(o)

Nomination of Pleader by Court.

11. Such letter should be delivered in person by the Native Officer or Soldier, to the Court, who may at the request of the party, nominate a Pleader of the Court to aid in preparing the Pleadings, and generally in conducting the prosecution or defence of the suit. The Court should at the same time cause the Native Officer or Soldier to be duly apprized of the provisions contained in Regulation XIV. of 1816, and in any other Regulation in force, relative to the duties and established fees of Pleaders, and of the necessity of conforming thereto in the event of his employing a Pleader.(p)

Personal pleading allowable.

12. But a Native Officer or Soldier is not prohibited from pleading his cause in person, or from employing any authorized Pleader of the Court, instead of applying to the Court to nominate a Pleader to act on his behalf.(q)

Suits to be tried forthwith.

13. The Courts should bring to a hearing, without regard to the order in which they may be filed, all suits in which a Native Officer or Soldier, who may have obtained leave of absence from his Corps may be a party, and to pass a decision thereon as speedily as may be consistent with the due administration of justice.(r)

Extended leave may be granted to Native Officer or Soldier,

14. If the cause cannot be brought to a decision previously to the expiration of the furlough granted to such Native Officer or Soldier, the Court, before whom the suit may be depending, is vested with a discretionary authority to grant to such Native Officer or Soldier an extension of his leave of absence for a period sufficient to admit of a reference being made to the Commanding Officer of the Corps, for the purpose of ascertaining whether the furlough can be prolonged for any further specific period. But whenever a Judge may exercise this discretionary power, he should be careful to make the reference immediately

(o) Cl. 1, Sec. 5, Reg. VIII, 1817.
(p) Cl. 2, Ibid.
(q) Sec. 6, Ibid.
(r) Cl. 1, Sec. 7, Ibid.

in an official letter to the Commanding Officer of the Corps to which the Native Officer or Sepoy may be attached.(s)

15. A Native Officer or Soldier returning to his Corps before a final decision has been passed in his suit, may leave the further conduct of the suit, either to a Mookhtyar duly constituted under the prescribed Mookhtyarnamah, or to one or more of the established Pleaders of the Court empowered to act for him by a regular Vakalutnamah.(t)

who may appoint Mookhtyar upon quitting Court station before Decree.

16. Whenever any land or other real property belonging to a Native Officer or Soldier may be attached by a Court of Justice for the purpose of realizing the amount of any judgment, fine or penalty imposed on such Native Officer or Soldier, the Court should cause notice of the same to be issued in the manner prescribed in para 8, and postpone the sale for such definite period as may appear reasonable for the purpose of affording an opportunity to the Native Officer or Soldier to discharge the amount of the judgment, fine or penalty.(u)

Notice, if real property belonging to a Native Officer or Soldier is attached.

17. The Commanding Officer of any Corps or Detachment cannot correspond with the Civil Courts, or with the Collectors, regarding the merits of any judgment or order passed by those authorities respectively under the foregoing provisions.(v)

Commanding Officers cannot correspond with Courts on merits of cases.

18. No part of the preceding rules is applicable to claims originating in loans granted by a Native Officer or Sepoy, or in pecuniary transactions of a commercial nature;(w) or to suits in which persons who may have been discharged from the Service, or who may be attached to Provincial Battalions, or to local or irregular Corps, or who may be Camp followers, or non-combatant retainers of the Army, or who may be relations or members of the family of a Native Officer or Soldier, may be parties. The said rules apply strictly and exclusively to Native Officers or Soldiers who may be entertained in regular Corps, and on the actual strength of the Army on the establishment of this Presidency.(x)

To what cases and troops these rules do not apply.

When they do apply.

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19. Actions of debt and other personal actions not exceeding in value Rupees 200 against Native Officers, Soldiers and other persons amenable to the Articles of War for the Native Army,

What suits must be brought before N. Military Court of Requests,

(s) Cl. 2, Sec. 7, Reg. VIII, 1817.
(t) Cl. 3, Ibid.
(u) Sec. 8, Ibid.
(v) Cl. 1, Sec. X, Ibid.
(w) Cl. 6, Sec. 3, Ibid.
(x) Cl. 2, Sec. 10, Ibid.

or residing within any Station or Cantonment and carrying on any trade or business in a Military Bazar, are only cognizable by a Native Military Court of Requests;(y) and, where the amount may not exceed 20 Rupees, by Officers in charge of the Police at Military Bazar Stations.(z)

what before Military Officer in charge of Police.

When such suits may be entertained by the Civil Tribunals.

20. But should it be averred in the Plaint that the Defendant was not of the above Military classes, when the cause of action arose, or when the suit was instituted; in that case, when the usual Notice may be served on the Defendant, he should, if he belonged to any of those classes, obtain and deliver to the Civil Officer by whom the Notice is served, a Certificate in the form F. in the Appendix to Regulation VIII of 1817, to show that he belonged to one of those classes when the cause of action arose and when the suit was instituted.(a)

21. If the Defendant do not deliver such Certificate, he must either attend pursuant to the Notice, or, in default thereof, be dealt with by the civil Court in the manner prescribed by the Regulations.(b)

22. If the Defendant, on being served with the usual Notice by the civil Court, maintain that the debt for which he is sued is of the description or amount cognizable by a Military Court, he must attend pursuant to the Notice, or, in default, be dealt with by the Court according to the Regulations. On his attending and producing the certificate aforesaid, the Court should immediately make such summary inquiry as may appear necessary, to ascertain whether the debt is, or is not, of the nature and amount cognizable by it, and should receive the certificate as proof of the facts declared in it, the decision of the Court upon this point being final, so far as to determine whether the suit can be entertained by it or not.(c)

23. If the Court determine that the suit was not cognizable by it, and be of opinion that the irregularity in the institution did not arise from any fraudulent motive on the part of the Plaintiff, it is competent to the Court, with the sanction of the

(y) *Vide page* 241.
(z) *Vide page* 246.
(a) Cl. 1, Sec. 22, Reg. VII, 1832.
(b) Cl. 2, Ibid.
(c) Cl. 3, Ibid.

Sudr Court to refund the whole, or a portion, of the stamp duty paid on the institution of such dismissed suit.(*d*)

Military and Naval pensions cannot be attached by legal process.

24. The reduced Pay or Pension, however called, of any Invalid Officer, Soldier, Sailor or retainer of the Army or Navy, in the Military, or Naval service of the East India Company, and also any monthly or yearly Pension or pecuniary allowance to any person in consideration of past services and present infirmities, or old age, granted by authority of the Governor General in Council, the Governor or Lieutenant Governor of any Presidency or place within the Territories under the Government of the East India Company, and also the pension of any Out Pensioner of Chelsea or Greenwich Hospital granted by authority of the Commissioners of Chelsea or Greenwich Hospital respectively, and also all money due, or to become due, on account of any such pension or allowance, is exempt from seizure, attachment or sequestration by process of any Court, at the instance of a creditor for any demand against the Pensioner, or in satisfaction of a Decree or order of any such Court.(*e*)

Assignment of such, by Pensioners, null and void.

25. All assignments, agreements, orders, sales, and securities of every kind made by any such Pensioner, in respect of any money not payable at, or before, the making thereof, on account of any such pension, or for giving or assigning any future interest therein, are null and void.(*f*)

Proviso.

26. But these provisions do not apply to any process of any Court established by Royal Charter, issued out of such Court, before the passing of Act VI. of 1849, or to any assignment, agreement, order, sale, or security by any such Pensioner, made before the passing of that Act, in respect of a Chelsea or Greenwich pension, or a pension or allowance granted in the Presidency of Madras.(*g*)

(*d*) Cl. 4, Sec. 22, Reg. VII, 1832.
(*e*) Sec. 2, Act VI, 1849.
(*f*) Sec. 3, Ibid.
(*g*) Sec. 4, Ibid.

SUITS, SPECIAL.

SECTION III.

SUITS AGAINST GOVERNMENT, OR PUBLIC OFFICERS.

Collectors of Revenue in Zillahs, amenable to the Zillah and Subordinate Zillah Courts for their official acts.

1. Collectors of the Revenue, and their Assistants and Native Officers; the Collectors of the Customs, their Assistants, and Native Officers employed in the collection of the Customs; the Mint and Assay Masters, and their Assistants and Native Officers, are amenable to the Zillah and Subordinate Zillah Courts, in the jurisdiction of which they may reside, or carry on the public business committed to their charge, for any act or acts done in their official capacity, in opposition to any established Regulation.(*h*)

How a party should proceed, if aggrieved by an act of a Public Officer under the Regulations.

2. If any person consider himself aggrieved under any established Regulation, by an act done by any of the above-mentioned Officers of Government, pursuant to a special order originating with the Governor in Council, or the Board of Revenue, the Officer by whom the act may be done is not liable to be sued for it. In such cases, Government is to be considered as the Defendant, and the person deeming himself aggrieved is to present a Petition to the Zillah or Subordinate Zillah Court, to which the Officer, by whom the act complained of may have been done, may be amenable in his public capacity, stating wherein he considers himself injured under the Regulations, and praying that the Governor in Council will order the Court in which the cause may be cognizable, to try the points or matters contested, agreeably to the Regulations. The Judge to whom the Petition may be presented, is to forward it immediately to the Governor in Council, who, provided he shall not think it proper to afford the redress solicited by the Petitioner, and provided the Courts of Justice be competent to try the cause, will direct the Court in which it may be cognizable, to proceed to the trial of it.(*i*)

Petition to be sent to Government, who may order the cause to be tried.

(*h*) Sec. 7, Reg. II, 1802.

(*i*) Sec. 15, Ibid.

3. If the Governor in Council should order the cause to be tried, the Court is immediately to send a written notification of the order to the complainant, and the cause is to be considered as filed in the Court, from the date of the notification. The Court is then to proceed to try the suit under the same Rules and Regulations as are prescribed for the trial of suits between individuals. The Officer by whom the act complained against may have been commited, is to carry on the suit under the directions of the Governor in Council, or the Board of Revenue, according to the immediate authority under which he may have acted, and is to issue the necessary instructions to the Government Pleader in the Court in which the suit may be instituted, or subsequently carried in appeal. In the event of Government being cast in any of the Courts, the Officer entrusted with the management of the suit is to send a copy of the Decree, and proceedings of the Court, to the Governor in Council, or to the Board of Revenue, according to the immediate authority under which he may have acted, with a letter stating any objection that he may have to offer to the decision. The Board is to submit all such Decrees and proceedings to the Governor in Council, with its opinion respecting them. The Governor in Council will order an appeal from the decisions that may be transmitted to him under this para, to be preferred, or not, as may appear to him advisable. The costs and damages that may be awarded against Government in suits so instituted, are to be defrayed from the public Treasury.(*j*)

Mode of trial

How Officer should proceed if Government be cast in suit.

4. Whenever a Petition of complaint may be preferred to any Court of Civil Judicature against a Collector, or other public Officer amenable thereto, for acts connected with his official duties, the Judge of such Court should receive and file the Petition of complaint in the same manner as all other such Petitions are received and filed, and issue the usual summons thereon.(*k*)

Plaints against PublicOfficers to be received and filed as other Plaints.

5. If the Public Officer, on receiving the summons, consider the case to be of such a nature as that he may either recommend to the Governor in Council to grant the redress sought by the Petition, or request permission to defend the suit at the public expense, he should immediately instruct the Government Pleader, to appear for him, and move the Court to grant him such

Reference to superior authority before answering Plaint.

(*j*) Sec. 15, Reg. II, 1802.

(*k*) Cl. 1, Sec. 2, Reg. I, 1823.

specific time, to put in his Answer to the Petition, as may be necessary to enable him to make the requisite reference to the Board of Revenue, or other official superior at the Presidency, and receive orders thereon. It is not necessary that any other Vakalutnamah be filed by the Government Pleader than the order issued to him to conduct the suit, under Section 37, Regulation XIV of 1816, by Government, or by an Officer duly authorized.(*l*)

Two months to be allowed to file Answer.

6. The Judges of the several Courts are to allow two months for the preparation of answers to such Petitions of complaint against Public Officers.(*m*)

Suit to be treated as private suit.

7. Whenever the above period may elapse without the Public Officer either showing that the suit is authorized to be defended at the public expense, or applying by motion in the usual way for an extension of such period, the Court should treat it in all respects as a private suit, and proceed to hear and determine it, as such, in accordance with the provisions of the Regulations.(*n*)

When suit may be struck off the file.

8. In the event of the redress sought for by the Plaint being granted under orders from the superior authority, in consequence of the reference made under para. 5, the Court in which the suit may have been filed, should certify the amount of costs incurred by the Plaintiff in the institution of the suit, and dismiss the cause from the file, on payment being made of such costs, or on the Plaintiff's filing a Razeenamah in the usual form.(*o*)

When costs are payable to Plaintiff.

9. But the Plaintiff is not entitled to receive such costs, should he fail to prove to the satisfaction of the Court, on being called upon so to do, that before instituting the suit, he applied to the Public Officer for the redress which, by his Plaint he sought to obtain, and that his application was refused.(*p*)

Prosecutions against Magistrates.

10. The Zillah Magistrates and their Assistants are amenable to the Zillah Court, in the jurisdiction of which they may reside or carry on the public business committed to their charge, by a civil prosecution, for any act or acts done in their official capacity in opposition to any established Regulation.(*q*)

(*l*) Cl. 2, Sec. 2, Reg, I, 1823.
C. O. 2d May 1835, No. 12.
(*m*) C. O. 12th February 1856.
(*n*) C. O. 20th May 1839, No. 57.
(*o*) Cl. 1, Sec. 4, Reg. I, 1823.
(*p*) Cl. 2, Ibid.
(*q*) Sec. 43, Reg. IX, 1816.
Sec. 38, Act VII, 1843.

11. If a Magistrate, when so prosecuted, consider that the redress demanded should be granted, or that the suit should be defended at the public charge, the aforesaid provisions of Regulation I of 1823, contain the rules on which they are to act. But whether those rules apply or not, if the suit proceed, it is clearly the duty of the Court to decide, whether the acts complained of were legal and justifiable, without reference to the opinion or judgment of the superior, criminal, or executive Tribunals, whose sentiments are not to guide the civil Courts, notwithstanding that the party may have also addressed himself to such Tribunals, for redress.(r)

12. As a general rule, Officers of Government, when prosecuted before H. M.'s Supreme Court for their public acts, should defend themselves, but should Government be disposed in any instance to depart from this ordinary course and to defend an Officer, the case should first be submitted to the Advocate General for his opinion as to whether the Government should undertake the defence or not. The Government will not authorize cases to be defended in its name, unless opportunity has been allowed for previously investigating their merits.(s)

Collector of Customs at Madras amenable to Subordinate Zillah Court at Chingleput for his official acts,

13. The Collector of Customs, his Deputy and Assistants, and Native Officers employed in the collection of the customs, at the port of Madras, are amenable to the Subordinate Court in the Zillah of Chingleput, for any act or acts done in their official capacity, contrary to, or not warranted by Act VI. of 1844; in the same manner as if they resided, or carried on the public business committed to their charge, within the limits of the jurisdiction of the said Zillah.(t)

in which Court persons deeming themselves aggrieved by any act of the Collector, may file a suit.

14. Persons deeming themselves aggrieved by the confiscation of their goods, or by the levying of double duty on such goods, under circumstances which may appear to them not to warrant, conformably to the provisions contained in Act VI, of 1844, the confiscation of such goods, or the subjecting them to the payment of double duty, may institute a suit in the said Court at Chingleput, for the recovery of the value of such goods, if they should have been confiscated; or of the amount of the double duty, in the event of double duty having

(r) C. O. 2d September 1830. A.
(s) S. U. Dy. 8th September 185
(t) Sec. 55, Reg. IX, 1803.

been levied on such goods, together with damages for the loss which such persons may have sustained thereby.(u)

Trial.

15. Suits instituted against the Collector of Customs, his Deputy, Assistants, or Native Officers, should be tried in the manner prescribed for the trial of suits against Collectors of Revenue in Zillahs.(v)

Security requisite from persons suing Collector.

16. The Courts should require all persons instituting suits against the Collector of Customs, to give good and sufficient security to prosecute such suits to an issue, and to pay whatever damages may be awarded against them by the Decree of the Court, in the event of the suits so instituted proving to be groundless or litigious. The Court should not issue process against the Collector of Customs, until the required securities shall have been given.(w)

Process.

17. When written process may be issued, by the said Court at Chingleput against the Collector of Customs at Madras, the Judge of the Court should transmit such process, under a sealed cover, addressed to the Collector, in the form of a letter, superscribed with his name and official appellation. The Collector should immediately acknowledge the receipt of the process, by an endorsement to that effect on the instrument, and return it under a sealed cover to the Judge of the Court.(x)

Report to be made to Revenue Board, and instructions awaited.

18. The Collector of Customs should report to the Board of Revenue the institution of any suit against him, and receive the orders of the Board of Revenue to defend the suit, or to make satisfaction to the party or parties, if the Board of Revenue see reason to do so.(y)

Collector to be indemnified for damages.

19. The Collector of Customs should be indemnified for all costs and damages awarded against him by the Court, in suits defended under the orders of the Board of Revenue.(z)

Defence undertaken without reference to Revenue Board, to be at the expense and risk of Collector.

20. If the Collector of Customs undertake the defence of any suit without reporting the same to the Board of Revenue and receiving their orders thereon, the defence so undertaken, should be at the cost and risk of the Collector of Customs; but it is op-

(u) Sec. 56, Reg. IX, 1803.
(v) Sec. 57, Ibid.
(w) Sec. 58, Ibid.
(x) Sec. 59, Ibid.
(y) Sec. 60, Ibid.
(z) Sec. 61, Ibid.

tional with the Board of Revenue to order the defence, so undertaken by the Collector of Customs, to be conducted on the public account, and at the expense of Government; or in the event of the suit having been decided against the Collector of Customs, to recommend to the Governor in Council that any part, or the whole, of the costs and damages awarded against the Collector of Customs may be defrayed from the public treasury.(a)

What suits against Collector are to be considered as of a private nature.

21. In prosecutions which may be instituted in the Subordinate Zillah Court of Chingleput against the Collector of Customs at Madras, for any act or acts done in his official capacity contrary to, or not warranted by, Act VI of 1844, or for any act or acts which may not involve claims to moneys received or demanded by him on behalf of Government in conformity thereto, such suits should be considered to be entirely of a private nature between the Collector of Customs and the prosecutors; the Collector of Customs should defend such suits at his own risk and expense, in the same manner as other individuals amenable to the jurisdiction of the Court of Chingleput, who may not be employed by Government.(b)

Collector not to derive pecuniary advantage from suits instituted against him in his official capacity.

Exception.

22. The Collector of Customs is not to derive pecuniary advantage from the suits which may be instituted against him in the Subordinate Zillah Court of Chingleput, in his official capacity, with exception to the personal suit of the nature described in the preceding para; but the amount of the costs and damages decreed against individuals instituting suits against the Collector of Customs, in his official capacity, on the ground of such suits being vexatious and litigious, should be carried to the credit of Government.(c)

Hazirzaminy security from Collector not requisite.

23. Security cannot be demanded from the Collector of Customs at Madras for his personal appearance, nor for the payment of the costs and damages that may be awarded against him: if the Collector of Customs at Madras omit or refuse to obey any order or decree of the Subordinate Court of Chingleput, in any suit instituted against him, on account of his official acts, the Court is empowered to fine him, according to the nature and extent of the offence. In the event of the Collector of Customs persisting in refusing to obey the order or

Liability of Collector to fine.

(a) Sec. 62, Reg. IX, 1803.
(b) Sec. 63, Ibid.
(c) Sec. 64, Ibid.

decree of the Court, and to pay the fine imposed on him by the Court for disobedience, the Judge should state the case to the Governor in Council, in order that the Decree may be enforced, by deducting from the salary and emoluments of the Collector of Customs, the amount of the costs and damages decreed against him, together with the fine imposed by the Court.(*d*)

Collector may appeal.

24. The Collector of Customs at Madras can appeal from the decisions of the Subordinate Zillah Court at Chingleput, to the Zillah Court; and from the Decrees of that Court to the Sudr Adawlut; and ultimately to Her Majesty in Council, subject to the rules and regulations prescribed regarding appeals from the decisions of those Courts respectively, (with exception to finding the securities required to be found by individuals;) but in suits which may be defended on the public account, under the orders of the Board of Revenue, the Collector of Customs cannot appeal without having received their written authority for that purpose.(*e*)

How Collector's instructions to Pleader are to be communicated.

25. The instructions which the Collector of Customs may transmit to the Pleaders of Government in the Courts, respecting suits instituted against him should be enclosed under a sealed cover, and directed to the Pleader, and transmitted under a sealed cover, addressed to the Judge of the Court in which the cause may be depending, and superscribed with the official appellation of the Collector. The Judge should deliver such instructions to the Pleader. In like manner, the Pleaders should transmit, through the Judges of the respective Courts, the papers and documents which they may have to return to the Collector of Customs.(*f*)

Collector not liable to prosecution for acts of his predecessor.

26. The Collector of Customs is not liable to prosecution for any act of his predecessor. But in the event of the Collector of Customs being removed from office during the time while suits, in which he may be engaged and for which he may be individually answerable, are depending in the Court, he must carry them on in the same manner as if he had continued in office.(*g*)

27. The Collector of Customs for the time being, must carry on suits for which Government may be ultimately responsible, under the orders of the Board of Revenue (*h*)

(*d*) Sec. 65, Reg. IX, 1803.
(*e*) Sec. 66, Ibid.
(*f*) Sec. 67, Ibid.
(*g*) Sec. 68, Ibid.
(*h*) Sec. 69, Ibid.

28. All the Rules above contained respecting the Collector of Customs, are equally applicable to his Deputy, or Assistant, (being Covenanted Servants of the Company), whilst officiating as Collectors.(i)

These rules apply to Deputy and Assistant Collectors.

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29. It is lawful for any Collector of Customs, or other Officer who may be authorized to adjudicate Customs cases, if he decide that a seizure of goods made under the authority of Act VI, of 1844, was vexatious and unnecessary, to adjudge damages to be paid to the proprietor by the Customs Officer who made such vexatious seizure, besides ordering the immediate release of the goods; and if the Proprietor accept such damages, no action can thereafter lie against the officer of Customs in any Court of Justice on account of such seizure: and if such adjudicating Officer decide that the seizure was warranted, but deem that the penalty of confiscation is unduly severe, it is lawful for him to mitigate the same to the extent of the levy of double duty; and if the said Officer adjudge confiscation it is further lawful for him to order that from the proceeds of the sale of the goods, a proportion not exceeding one-half be distributed in rewards amongst such Officers as he may deem entitled thereto, and in such proportion as he may direct to each respectively.(j)

Collector may decide cases of seizure.

30. All Officers of Customs are amenable to the civil Courts by action for damages on account of any executive acts done in their official capacity, at the suit of the parties injured by such acts. Provided, however, that no suit can lie against a Collector of Customs or other Officer, for any judicial award in a matter of customs passed under the preceding para.(k)

All Officers of Customs amenable to civil Courts.

Proviso.

31. On a seizure of Salt being reported to the Board of Revenue, they should immediately take the case into consideration. If they determine that the Salt is not liable to confiscation, they should order it to be released, and the Officer by whose authority the Salt shall have been seized (not being a Magistrate) is liable to be sued for damages in the Zillah or Subordinate Zillah Court, and must maintain the suit at his own risk and expense; the Board are, however, empowered to indemnify the person by whose authority the seizure shall have been made,

How Board of Revenue should act on report of seizure of salt.

(i) Sec. 70, Reg. IX, 1803.
(j) Sec. 62, Act VI, 1844.
(k) Sec. 63, Ibid.

for the consequence of the suit, should they, on a consideration of the circumstances of the case, deem such person entitled to indemnification; or the Board may order the suit to be defended on the part of Government, or grant such indemnification as they may deem equitable, to the owners of the Salt, reporting to Government the measures they may have adopted and their reasons for adopting them.(*l*)

Prosecutions against Government or its Officers, under Regulation I, 1805,

32. Persons deeming themselves aggrieved under Regulation I of 1805 by any act or order, done or issued by the Governor in Council, or by the Board of Revenue, or by any of the Officers of Government, are at liberty to apply for redress, in the manner prescribed in para. 2.(*m*)

and under Regulation VII, 1811.

33. Any person who may deem himself aggrieved under Regulation VII of 1811, by any act or order, done or issued by the Governor in Council, or by the Board of Revenue, or by any of the Officers of Government, is at liberty to apply for redress in the manner prescribed in para. 2.(*n*)

Copy of Decree in cases in which Government is a party to be sent to Government.

34. In all original suits or appeals, wherein Government may be one of the parties, the Court which may pass judgment, whether for or against Government, should, in addition to the prescribed copies of Decrees to be delivered to the parties, transmit a copy of the Decree, as soon as the same can be prepared, to the Secretary to Government in the Judicial Department, for the information of the Governor in Council. Such copies of Decrees are not to be on stamped paper, but are to be duly authenticated by the official seal and signature of the Judge, by whom the same may have been passed.(*o*)

Protection of Judicial Officers and their Subordinates.

35. No Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially, is however liable to be sued in any of the Civil Courts for any act done, or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction; provided that he at the time, in good faith, believed himself to have jurisdiction to do or order the act complained of; and no Officer of any Court, or other person bound to execute the lawful warrants or orders of any such Judge, Magistrate, Justice of the Peace, Collector or other person acting

(*l*) Sec. 17, Reg. I, 1805.
(*m*) Sec. 21, Reg. I, 1805.
(*n*) Sec. 17, Reg. VII, 1811.
(*o*) Sec. 31, Reg. VII, 1809.

judicially, is liable to be sued in any Civil Court, for the execution of any warrant or order which he would be bound to execute, if within the jurisdiction of the person issuing the same.(*p*)

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36. Act XXXVII of 1850 provides for inquiry being made into the conduct of Public Servants not removable without the sanction of Government. Its provisions are as follows

Government may order formal inquiry into charges against Public Servants.

(II.) Whenever the Government shall be of opinion that there are good grounds for making a formal and public inquiry into the truth of any imputation of misbehaviour by any person in the service of the East India Company not removable from his office without the sanction of the same Government, it shall cause the substance of the imputations to be drawn into distinct articles of charge, and shall order a formal and public inquiry to be made into the truth thereof.

To whom inquiry to be committed.

(III.) The inquiry may be committed either to the Court, Board or other authority, to which the person accused is subordinate, or to any other person or persons to be specially appointed by the Government, Commissioners for the purpose; notice of which Commission shall be given to the person accused, ten days at least before the beginning of the inquiry.

Prosecutor may be appointed by Government.

(IV.) When the Government shall think fit to conduct the prosecution, it shall nominate some person to conduct the same on its behalf.

Penalty for persons making false accusations.

(V.) When the charge shall be brought by an accuser, the Government shall require the accusation to be reduced to writing, and verified by the oath or solemn affirmation of the accuser, and every person who shall wilfully and maliciously make any false accusation under this Act, upon such oath or affirmation, shall be liable to the penalties of perjury; but this enactment shall not be construed to prevent the Government from instituting any inquiry which it shall think fit, without such accusation on oath or solemn affirmation as aforesaid.

Accusation on oath not necessary on the part of Government.

Security from accuser.

(VI.) Where the imputations shall have been made by an accuser, and the Government shall think fit to leave to him the conduct of the prosecution, the Government, before appointing the

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(*p*) Act XVIII, 1850.

Commission, shall require him to furnish reasonable security that he will attend and prosecute the charge thoroughly and effectually, and also will be forthcoming to answer any countercharge or action which may be afterwards brought against him for malicious prosecution, or perjury, or subordination of perjury, as the case may be.

Government may abandon prosecution, and allow accuser to continue it.

(VII.) At any subsequent stage of the proceedings, the Government may, if it think fit, abandon the prosecution, and in such case may, if it think fit, on the application of the accuser, allow him to continue the prosecution, if he is desirous of so doing, on his furnishing such security as is hereinbefore mentioned.

Powers of the Commissioners.

(VIII.) The Commissioners shall have the same power of punishing contempts and obstructions to their proceedings, as is given to Civil and Criminal Courts by Act XXX of 1841, and shall have the same powers for the summons of witnesses, and for compelling the production of documents, and for the discharge of their duty under the Commission, and shall be entitled to the same protection as the Zillah and City Judges, except that all process to cause the attendance of witnesses, or other compulsory process, shall be served through, and executed by, the Zillah or City Judge in whose jurisdiction the witness or other person resides, on whom the process is to be served, and if he resides within Calcutta, Madras or Bombay, then, through the Supreme Court of Judicature there. When the Commission has been issued to a Court, or other person or persons having power to issue such process in the exercise of their ordinary authority, they may also use all such power for the purposes of the commission.

Penalty for disobeying process.

(IX.) All persons disobeying any lawful process issued as aforesaid for the purposes of the Commission shall be liable to the same penalties, as if the same had issued originally from the Court or other authority through whom it is executed.

When copy of the charge and list of documents and witnesses are to be delivered to accused.

(X.) A copy of the articles of charge, and list of the documents and witnesses by which each charge is to be sustained shall be delivered to the person accused, at least three days before the beginning of the inquiry, exclusive of the day of delivery and the first day of the inquiry.

(XI.) At the beginning of the inquiry, the prosecutor shall exhibit the articles of charge to the Commissioners, which shall be

openly read, and the person accused shall thereupon be required to plead 'guilty' or 'not guilty' to each of them, which pleas shall be forthwith recorded with the articles of charge. If the person accused refuse, or without reasonable cause neglect, to appear to answer the charge either personally, or by his Counsel or Agent, he shall be taken to admit the truth of the articles of charge.

Charges to be openly read, and accused required to plead guilty or not guilty.

(XII.) The prosecutor shall then be entitled to address the Commissioners in explanation of the articles of charge, and of the evidence by which they are to be proved, and his address shall not be recorded.

Prosecutor may then address Commissioners.

(XIII.) The oral and documentary evidence for the prosecution shall then be exhibited: the witnesses shall be examined by or on behalf of the prosecutor, and may be cross-examined by or on behalf of the person accused. The prosecutor shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without leave of the Commissioners, who also may put such questions as they think fit.

Examination of witnesses.

(XIV.) If it shall appear necessary, before the close of the case for the prosecution, the Commissioners may, in their discretion, allow the prosecutor to exhibit evidence not included in the list given to the person accused, or may themselves call for new evidence, and in such case the person accused shall be entitled to have, if he demand it, an adjournment of the proceedings for three clear days, before the exhibition of such new evidence, exclusive of the day of adjournment and of the day to which the proceedings are adjourned.

New evidence may be taken, and proceedings adjourned.

(XV.) When the case for the prosecution is closed, the person accused shall be required to make his defence, orally or in writing, as he shall prefer. If made orally, it shall not be recorded; if made in writing, it shall be recorded, after being openly read, and in that case a copy shall be given at the same time to the prosecutor.

Defence.

(XVI.) The evidence for the defence shall then be exhibited, and the witnesses examined, who shall be liable to cross-examination and re-examination, and to examination by the Commissioners, according to the like rules as the witnesses for the prosecution.

Evidence for the defence.

Examination on oath or affirmation.

(XVII.) All witnesses, either for the prosecution or defence, shall be examined on oath, or, if exempt from taking an oath in Courts of Justice, on solemn affirmation, to be administered in either case by one of the Commissioners, and every witness so examined and wilfully giving false evidence on any material point shall be deemed guilty of, and liable to the penalties of, perjury. When the prosecution is not conducted on behalf of Government, the prosecutor may himself give evidence for the prosecution and may be examined for the defence.

A private prosecutor may be examined for both sides.

Notes taken in English of oral evidence to be read to each witness.

(XVIII.) The Commissioners, or some person appointed by them, shall take notes in English of all the oral evidence, which shall be read aloud to each witness by whom the same was given, and, if necessary, explained to him in the language in which it was given, and shall be recorded with the proceedings.

Inquiry ends if accused makes oral defence, and offers no evidence.

If written defence be made and evidence offered, prosecutor may reply and produce new evidence.

(XIX.) If the person accused makes only an oral defence, and exhibits no evidence, the inquiry shall end with his defence. If he records a written defence, or exhibits evidence, the prosecutor shall be entitled to a general oral reply on the whole case, and may also exhibit evidence to contradict any evidence exhibited for the defence, in which case the person accused shall not be entitled to any adjournment of the proceedings although such new evidence was not included in the list furnished to him.

Articles of charge may be amended, and inquiry adjourned.

(XX.) When the Commissioners shall be of opinion that the articles of charge, or any of them, are not drawn with sufficient clearness and precision, the Commissioners may require the same to be amended, and may thereupon, on the application of the person accused, adjourn the inquiry for a reasonable time. The Commissioners may also, if they think fit, adjourn the inquiry from time to time, on the application of either the prosecutor or the person accused, on the ground of the sickness or unavoidable absence of any witness, or other reasonable cause. When such application is made and refused, the Commissioners shall record the application, and their reasons for refusing to comply with it.

After close of inquiry proceeding to be reported to Government.

(XXI.) After the close of the inquiry, the Commissioners shall forthwith report to Government their proceedings under the Commission, and shall send, with the record thereof their opinion upon each of the articles of charge separately, with such observations as they think fit on the whole case.

(XXII.) The Government, on consideration of the report of the Commissioners, may order them to take further evidence, or give further explanation of their opinions. It may also order additional articles of charge to be framed, in which case the inquiry into the truth of such additional articles shall be made in the same manner as is herein directed with respect to the original charges. When special Commissioners have been appointed, the Government may also, if it think fit, refer the report of the Commissioners to the Court or other authority to which the person accused is subordinate, for their opinion on the case; and will finally pass such orders thereon as appear just and consistent with its powers in such cases.

Government may order further inquiry, and in case of Special Commissioners consult the authority to which accused may be subordinate, and pass final orders.

(XXIII.) The word 'Government,' as used in this Act, means the Governor General in Council, the Governor or Deputy Governor of the Presidency of Fort William in Bengal, the Governor in Council of the Presidencies of Fort St. George and Bombay respectively, and the Lieutenant Governor of the North Western Provinces of Bengal, whose sanction is necessary for the removal of the person accused.

Meaning of word "Government" as used in this Act.

(XXIV.) Nothing in this Act shall be construed to repeal any Act or Regulation in force for the suspension or dismissal of Principal and other Sudr Ameens, or of Deputy Magistrates or Deputy Collectors, but a Commission may be issued for the trial of any charge against any of the said Officers under this Act, in any case in which the Government shall think it expedient.

Act or Regulation for the suspension of Uncovenanted Officers not affected

(XXV.) Nothing in this Act shall be construed to affect the authority of Government, for suspending or removing any public servant for any cause, without an inquiry under this Act.

Power of Government to suspend or remove Public Servants without inquiry not affected.

NOTE.—*Besides the three descriptions of "Special Suits" embraced in this Chapter, there is another class of suits, which ought properly to be included herein; viz. Revenue suits under Regulations XXVII, XXVIII and XXX of* 1802; *but for the reasons stated in the Note at page* 80, *they have not been here inserted.*

SUITS, SUMMARY.

What suits are summary.

1. The proceedings in suits before District Moonsiffs, for sums of money or other personal property, of an amount or value not exceeding twenty Rupees, should be summary.(q)

Plaint.

2. The Plaint should state briefly the cause of action, and, if founded on a bond or document, such bond or document should be filed with the Plaint.(r)

Answer.

3. The Answer of the Defendant should be recorded by the Moonsiff as a statement, and the Defendant be required to affix his signature thereto. Should the Defendant object to sign the Answer thus prepared, he should be required to file a brief Answer, which should form part of the Record.(s)

Trial.

4. Suits of the above nature should be tried without reference to their order on the file.(t)

5. No points should be recorded by the Court for establishment by the parties, but the Record should contain the purport of the evidence adduced.(u)

Decree.

6. The Decree should state in the beginning not only the amount at issue, but the nature of the liability on each Defendant, and specify shortly and distinctly in its body, what each party had proved, or failed to prove.(v)

7. The Decree of the District Moonsiff is final.(w)

Act XXIX, 1841 to be enforced.

8. The provisions of Act XXIX, of 1841, are applicable to such suits, and should be strictly enforced by District Moonsiffs.(x)

Delay in disposal to be explained.

9. The District Moonsiffs should, in their Quarterly Civil Reports, enter, under a separate heading, such of these suits as may have remained for more than six months pending on their files respectively, with the reason of the delay that occurred in their disposal.(y)

(q) C. O. 22d July 1854.
(r) Ibid.
(s) Ibid.
(t) Ibid.
(u) Ibid.
(v) C. O. 26th February 1856.
(w) Sec. 43, Reg. VI, 1816.
(x) C. O. 22d July 1854.
(y) Ibid.

VILLAGE MOONSIFF.

1. Heads of villages are, by virtue of their Office, Moonsiffs within their respective villages.(z)

Who are Moonsiffs.

2. In villages, whether permanently settled, rented, or in the hands of Government, where there may be more than one head man coming under the denomination of potail, reddy, peddacapoo, yajeman, renter, or any other designation, the person who collects the revenue, and under whose authority the village servants act, is to be considered as the Head of the village. No person can act as Head of the village, who does not generally reside in it. Where there is but one resident renter of a village, he is to be considered as the Head of the village; when the renter is not a resident, the person who rents or manages the village under him, is to be considered as the Head of the village.(a)

3. Where, from the names of two or more persons being introduced in the same pottah, as heads or renters of the village, or from any other cause, doubts may arise, as to whom the office of Head of the village belongs, the Collector should select one person, and give him a pottah to act as the Head of the village.(b)

4. The appointment and dismissal of the Village Moonsiffs are vested exclusively in the Collector.(c)

Who may appoint and dismiss.

5. Village Moonsiffs are not required to take any official oath.(d)

No oath required.

6. They are not liable to be called before the District Moonsiff to answer for their conduct as Village Moonsiffs in any case.(e)

Not amenable to D. Moonsiffs.

(z) Sec. 2, Reg. IV, 1816.
(a) Cl. 1, Sec. 3, Ibid.
(b) Cl. 2, Ibid.
(c) S. U. Dy 8th February 1831.
(d) Cl. 1, Sec. 4, Reg. IV, 1816.
(e) Cl. 2, Ibid.

or to higher Courts, except for corruption or exceeding authority.

7. Nor are they liable to be called before the Zillah, or Subordinate Zillah Court, to answer for their conduct as Village Moonsiffs, except on charges of corruption, or of having exceeded the powers of fine, or imprisonment, vested in them, as hereunder stated.(*f*)

Suits cognizable.

8. Village Moonsiffs are empowered to hear, try, and determine, of their own authority and without appeal, such suits as may be preferred to them for sums of money or other personal property, the amount or value of which may not exceed ten Rupees.(*g*)

Proviso.

9. Provided that the cause of action have arisen within 12 years previous to the institution of the suit, or that the Plaintiff do shew by clear and positive proof, either that he had demanded the money or matter in question, and that the Defendant had admitted the justice of the demand, or that he had directly preferred his claim within the period abovementioned to a competent authority, and in such case, that he assign satisfactory reasons to the Moonsiff why he did not proceed in the suit, or prove that, from minority or other good and sufficient cause, he was precluded from obtaining redress.(*h*)

Suits not cognizable.

10. Village Moonsiffs are prohibited from receiving, or trying any suit for damages on account of personal injuries, or for personal damages of any nature.(*i*)

11. Or any suit in which they, or any of their immediate servants, are personally interested.(*j*)

12. Or suits against any person or persons, who may not be found to be actually resident within their jurisdiction at the time when such suits shall be preferred.(*k*)

13. Suits in which a Village Moonsiff is a party, should be tried by the Moonsiff of another village, or by any competent authority.(*l*)

Pleaders.

14. Plaintiffs and Defendants should be allowed to employ a relative, a servant, or a dependent, to plead before the Village

(*f*) Cl. 3, Sec. 4, Reg. IV, 1816.
(*g*) Cl. 1, Sec. 5, Ibid.
(*h*) Cl. 2, Ibid.
(*i*) Sec. 6 Ibid.
(*j*) Sec. 7, Ibid.
(*k*) Sec. 8, Ibid.
(*l*) Sec. 26, Ibid.

Moonsiff, on furnishing the person so employed, with a Vakalutnamah, describing his relation to his employer and the matter in which he is empowered to act.(*m*)

15. Village Moonsiffs cannot in any case permit any person to act as the Pleader of another, until such person shall have exhibited a Vakalutnamah containing the information required by the preceding para.(*n*)

Curnum to assist Moonsiff.

16. In hearing, trying, and determining civil suits, the Village Moonsiffs are to be assisted by the Village Curnums, or persons holding the office of Curnum for the time being, a part of whose duty it is to attend as assessors, to write the proceedings of the Moonsiffs, and, when required, to afford them their advice. But the Village Moonsiff must decide by his own opinion, whether it agree or not with that of the Curnum.(*o*)

17. The Curnums should keep Registers of the suits preferred to the Village Moonsiff, entering each complaint in the order in which it may be received.(*p*)

Plaint.

18. The Plaint should state precisely the grounds of complaint, the time when the cause of action arose, the name and residence of the person or persons complained against, the total amount or value of the property claimed, and all material circumstances which may elucidate the transaction.(*q*)

Summons to Defendant.

19. Upon a complaint being preferred in writing to the Village Moonsiff, he should, by a verbal summons, require the Defendant to appear before him in person or by Vakeel, immediately, or within two days from the delivery of the summons.(*r*)

20. The Summons should be served by the village servant, usually employed in carrying messages, who should be accompanied by the Plaintiff or his Vakeel, to point out the Defendant and to explain to him the demand against him.(*s*)

21. If a Defendant, having been served with a summons in the mode above mentioned, neglect or refuse to attend within the time limited, the village servant should be called upon to make

(*m*) Cl. 1, Sec. 9, Reg. IV, 1816.
(*n*) Cl. 2, Ibid.
(*o*) Cl. 1, Sec. 10, Ibid.
(*p*) Cl. 2, Ibid.
(*q*) Sec. 11, Ibid.
(*r*) Cl. 1, Sec. 12, Ibid.
(*s*) Cl. 2, Ibid.

Judgment ex parte.

solemn affirmation to the service of the summons; after which, the Village Moonsiff should proceed to give judgment on the Plaintiff's vouchers and the evidence of his witnesses.(t)

Plaint to be read to Defendant if he appear.

22. If the Defendant attend in obedience to the summons, the Plaint should be read over to him, and if he acknowledge that the Plaintiff has a claim upon him, the Village Moonsiff should advise the parties to settle the matter amicably. If the Plaintiff be satisfied by the Defendant, the Village Moonsiff should cause him to execute a Razeenamah, stating in what manner the Defendant has satisfied him, which Razeenamah should be certified by the Village Moonsiff as having been executed in his presence, and he should then deliver it to the Defendant.(u)

Adjustment by Razeenamah.

When Answer is requisite.

23. If the Defendant, on the Plaint being read over to him, object to the demand, and the parties be unable to adjust the dispute amicably, the Village Moonsiff should deliver to the Defendant a copy of the Plaint and require him to deliver his Answer immediately, or on a certain day, not more than five days after the day on which the Plaint was read.(v)

24. The Answer should contain all that the Defendant has to state regarding the case; and no further Pleading be admitted.(w)

Examination into truth of Plaint.

25. When the Answer has been filed, the Village Moonsiff, either immediately, or on a fixed day as soon after as the business before him will permit, is to examine the truth of the complaint or claim. If the parties are willing to dispense with the examination of witnesses, the Village Moonsiff is to give his decision on due consideration of the Plaint and Answer, and any vouchers which may be produced; or if either party is willing to let the cause be settled by the oath of the other, the Village Moonsiff is to give his decision according to such oath.(x)

Adjustment by oath.

Summoning of witnesses.

26. Village Moonsiffs are authorized to require the attendance of any person in their respective villages, who may be named

(t) Cl. 3, Sec. 12, Reg. IV, 1816.
(u) Sec. 13, Ibid.
(v) Cl. 1, Sec. 14, Ibid.
(w) Cl. 2, Ibid.
(x) Cl. 3, Ibid.

as a witness by any party in a suit, by a verbal summons, fixing a day for the attendance of such witness.(y)

27. The summons should be served by the village servant usually charged with carrying messages, attended by the parties or their respective Vakeels to point out the witnesses.(z)

Solemn affirmation may be administered.

28. The Village Moonsiffs are authorized to cause a solemn affirmation to be administered to witnesses, in cases where they may deem it necessary.(a)

29. The Village Moonsiff should, previously to the examination of a witness, inform him that he has authority to cause a solemn affirmation to be administered to him, when he may think he is not giving his evidence correctly; which authority the Village Moonsiff may exercise at his discretion.(b)

Written depositions unnecessary.

30. It will not, in any case, be necessary to take the depositions of the witnesses in writing.(c)

When witnesses may be fined.

31. If a witness, duly summoned, refuse to attend, or attending refuse to answer, such witness is liable to be fined for every such offence, at the discretion of the Village Moonsiff, in a sum not exceeding half a Rupee.(d)

32. Witnesses appearing before Village Moonsiffs should be treated with the respect due to their rank and station in life.(e)

Postponement of trial.

33. If any person, whose testimony is necessary in a suit, be temporarily absent from the Village, the trial of the suit should be postponed until his return.(f)

Mode of obtaining evidence of persons in another Village.

34. If in any case the evidence of a person residing in a different village be required, provided that the villages be not farther distant than two coss, the Moonsiff requiring his attendance should address a summons to such person, containing the names

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(y) Cl. 1. Sec. 15, Sec. 12, Reg. IV, 1816.
(z) Cl. 2, Ibid.
(a) Cl. 3, Ibid.
(b) Cl. 4, Ibid.
(c) Cl. 5, Ibid.
(d) Cl. 6, Ibid.
(e) C. O. 25th August 1823.
(f) Cl. 1, Sec. 16, Reg. IV, 1816.

of the parties in the suit and fixing a day for his attendance, and should forward it to the Moonsiff of the village in which such person may reside, who should cause the summons to be served by his own village servants, and return the same, with a certificate that it has been duly served.(g)

35. Any person refusing, or neglecting to attend on such summons, is liable to be fined in a sum not exceeding one half a Rupee, which should be levied by the Village Moonsiff in whose jurisdiction such person may reside, on a communication of the order imposing the fine being made to such Moonsiff, by the Moonsiff by whom such order may be passed.(h)

36. If the person, whose evidence is required, reside at a greater distance from the village than two coss, the Village Moonsiff is authorized to request (by a letter bearing his signature) the Moonsiff of the village in which the person, whose testimony is required, may reside to examine such witness on written interrogatories prepared by one or both parties, or by their Vakeels. The Village Moonsiff should examine the witness or witnesses named in the letter, according to the requisition of it, and return the deposition of each witness duly subscribed by him, by the time required in the letter, and every deposition so taken, should be received as good evidence in the cause.(i)

Attendance of women of rank or caste not to be required.

Their evidence to be given in writing.

37. Village Moonsiffs should not summon any woman to appear before them, whose rank or caste may render it improper to require her attendance: but when the evidence of such person is necessary, the village Moonsiff is to require her to furnish her deposition in writing, duly attested. The deponent should state in her deposition, that she is prepared to make solemn affirmation to the truth of her deposition if required.(j)

Stamp Laws to be observed.

38. The provisions of the Stamp Regulations should be observed by Village Moonsiffs in the admission of exhibits in suits depending before them;(k) a list of the prescribed rates of duties on stamped paper and stamped cadjan, being furnished by the

(g) Cl. 2, Sec. 16, Reg. IV, 1816.
(h) Cl. 3, Ibid.
(i) Cl. 4, Ibid.
(j) Sec. 5, Ibid.
(k) *Vide page* 330.

Collector to every village Curnum in their respective Districts, for the guidance of the Village Moonsiffs.(*l*)

39. The Village Moonsiffs, in suits depending before them, are strictly prohibited from requiring securities of any kind from Defendants.(*m*)

Security cannot be taken.

40. If a Plaintiff do not attend on the day fixed for the trial, and the Defendant be in attendance before the Moonsiff, the suit should be dismissed, and not be revived, unless the Plaintiff shews good and sufficient cause for his absence.(*n*)

Dismissal of suit, if Plaintiff do not appear.

41. If the Defendant refuse to answer the Plaint, or do not attend on the day fixed for the trial, the Village Moonsiff should proceed to try the cause *exparte*, as prescribed in para. 21.(*o*)

Trial *exparte*, if Defendant do not appear.

42. When the parties have been heard, the exhibits received and considered, and the witnesses on both sides examined, the Village Moonsiff should give judgment according to justice and right.(*p*)

Judgment after hearing both sides.

43. The Decree should specify the names of the parties and the names of the witnesses examined, and the titles of the exhibits read. It should also contain an abstract statement of the principal grounds and reasons on which the decision may be passed. It should specify the sum of money, or the value of the personal property adjudged. The Decree should bear the signature or mark and seal of the Village Moonsiff and Curnum, and be dated on the day on which it is passed.(*q*)

Decree.

44. When a Curnum refuses to sign the Decree, his contumacy should be reported to the Collector in order to his removal from Office.(*r*)

45. Village Moonsiffs should, within three days after passing a Decree, cause two copies of it to be prepared by the Village Curnum, and deliver one copy to each party, the date of such

(*l*) Cl. 2, Sec. 34, Reg. IV, 1816.
(*m*) Sec. 17, Ibid.
(*n*) Cl. 1, Sec. 18, Ibid.
(*o* Cl. 2, Ibid.
(*p*) Sec. 20, Ibid.
(*q*) Sec. 21, Ibid.
(*r*) S. C. Dy 25th Nov. 1846.

delivery being certified by the signature of the Moonsiff and of the Curnum.(s)

46. If the Plaintiff or Defendant do not attend in person or by Vakeel to receive a copy of the Decree, or do refuse to receive it when tendered, the Village Moonsiff should cause such omission or refusal to be noted on the back of the copy of the Decree so omitted to be taken, or refused, and should deposit it with the Curnum for the purpose of delivering it to the party, if he should afterwards claim it.(t)

Punishment for disrespect to Moonsiff.

47. Parties or their Vakeels and Witnesses, guilty of disrespect to a Village Moonsiff, are liable to be fined by him in a sum not exceeding half a Rupee.(u)

Commutation of fine for imprisonment.

48. No Village Moonsiff can punish any party, Vakeel, or Witness, in any suit before him, excepting under the provisions of paras 31, 35, and 47, provided however, that if the party, Vakeel or Witness, refuse or be unable, to pay the fine, the Village Moonsiff may, at his discretion, commute such fine for twelve hours' confinement in the village choultry.(v)

Fines levied to be sent to D. Moonsiff.

49. All fines levied by the Village Moonsiff should be sent at the end of each month to the District Moonsiff, with a list stating the names and situations of the parties from whom such fines have been levied, and the reasons for which they were imposed.(w)

Village Moonsiff may determine suits as Arbitrator,

50. The Village Moonsiff is authorized to hear, try, and determine, as Arbitrator, suits for sums of money or other personal property, the amount or value of which may not exceed one hundred Rupees; provided both the parties interested in such suits, voluntarily agree in writing to refer them to his decision as Arbitrator, and voluntarily subscribe bonds, in the presence of two or more credible witnesses who should attest the same, binding themselves to abide by the decision of the Moonsiff to whom they may refer the suit, whether he be the Moonsiff of their own village, or of any other village.(x)

(s) Cl. 1, Sec. 24, Reg. IV, 1816.
(t) Cl. 2, Ibid.
(u) Sec. 19, Ibid.
(v) Sec. 25, Ibid.
(w) Sec. 33, Ibid.
(x) Sec. 27, Ibid.

51. In trying such suits, the Village Moonsiffs are to be guided by the rules prescribed for their conduct in trying suits preferred to them under the provisions of para. 8, so far as those rules may be applicable.(y)

52. Village Moonsiffs may assemble Punchayets within their respective Villages for determination of Civil suits.(z)

and assemble Punchayets.

53. Village Moonsiffs are also to assemble Punchayets for the trial of cases referred to them by the Collectors under Regulation XII. of 1816.(a)

54. Village Moonsiffs are liable to prosecution in the Subordinate Zillah Court for corruption in the discharge of their trust, by either party in a suit before them, and for any oppressive and unwarranted act of authority by the party injured; and upon proof of the charge to the satisfaction of the Subordinate Judge or Principal Sudder Ameen, he should in the first mentioned case adjudge the offender to pay the prosecutor three times the amount, or value of the money or property corruptly received, with all costs of suit; and in the second, award such damages and costs to the party injured as may appear to him equitable. But no Village Moonsiff can be prosecuted for want of form or for error in his proceedings or judgment; nor can any process whatever be issued against a Moonsiff charged with corruption, or any oppressive and unwarranted act of authority, unless the Judge be previously satisfied by sufficient evidence that there is probable cause to believe that the charge is well founded, and unless the charge be preferred within three months from the date of the act complained of.(b)

Liability to prosecution for corruption, or oppressive and unwarranted acts.

55. The Subordinate Judge or Principal Sudr Ameen should, on charges of corruption, fine the party by whom or for whom the corruption may have been practised, provided he assented to such corruption, in a sum equal to the value of the thing or sum of money which the Moonsiff may be proved to have so corruptly received.(c)

56. If the corruption charged against any Village Moonsiff be not proved to the satisfaction of the Judge, he should award

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(y) Sec. 28. Reg. IV, 1816.
(z) *Vide page* 60.
(a) *Vide page* 68.
(b) Cl. 1, Sec. 35, Reg. IV, 1816.
(c) Cl. 2, Ibid.

full costs and such charges to the Moonsiff as may appear to him equitable, and levy a fine from the party making such groundless charge, not exceeding the value of the thing or sum of money charged to have been corruptly received.(*d*)

57. A copy of Regulations IV and XII of 1816 should be lodged with and preserved by each Village Curnum for the information of the Village Moonsiff.(*e*)

For execution of Decrees of Village Moonsiffs, see p. 123.

(*d*) Cl. 3, Sec. 35, Reg. IV, 1816.
(*e*) Sec. 39, Ibid.
Sec. 13, Reg. XII, 1816.

ZILLAH JUDGE.

1. The Provincial Courts which existed previously to the enactment of Act VII of 1843, have been substituted by Zillah Courts to perform the functions exercised by the Provincial Courts.(f)

Constitution of Court.

2. Every Zillah Court is superintended by one Judge, who is styled Civil and Session Judge of the Zillah.(g)

Designation of Judge.

3. In any Zillah in which the Governor in Council may deem it unnecessary to establish a Subordinate Zillah Court constituted according to Regulation I or VII of 1827, it is competent to him, by an order in Council, to authorize the Zillah Judge to exercise the Civil jurisdiction assigned to such Subordinate Courts, besides the proper civil jurisdiction of the Zillah Court.(h)

When he may discharge duties of Subordinate Judge.

4. The Governor General in Council, may, by an order in Council, authorize the Governor in Council of Fort St. George at any time to change the stations of the Zillah Courts, and the limits of their local jurisdiction; and to abolish any of the Zillah Courts first established under Act VII of 1843, and to establish new Zillah Courts in any parts of the Presidency.(i)

Stations and local jurisdiction may be altered.

5. Every Zillah Judge, previously to entering upon the execution of the duties of his office, is to make and subscribe a solemn declaration according to the form prescribed in Section 2, Regulation IV of 1802.(j) This declaration must invariably be made before some Court of Justice in the Provinces.(k)

Solemn declaration.

6. The Zillah Courts are to be held in a large and convenient room in the city or place at which they are respectively established, three days in every week, or oftener if the state of the business render it necessary. Whenever the Judge may, from indisposition or other cause, be prevented from holding Court

Court House.

Sittings.

(f) Sec. 1, Act. VII, 1843.
(g) Sec. 2, Ibid.
(h) Sec. 45, Ibid.
(i) Sec. 53, Ibid.
(j) Sec. 2, Reg. IV, 1802.
(k) F. S. G. G. 20th March 1849.

three days in each week, he is, at the expiration of the week, to report the cause to the Sudr Adawlut. The report is not to be made when the Court may be shut pursuant to orders from the Sudr Adawlut under Regulation III of 1816.(*l*)

Orders &c.

7. No rule, order, proceeding or Decree can be made, but on Court days, but they need not be made in open Court.(*m*)

8. The orders passed on Petitions &c. should be written in English, a translation in the language of the Court being incorporated in the record.(*n*)

Subordinates and Pleaders.

9. The Subordinate Officers and Pleaders appointed to the Zillah Courts are subject to the same rules as were applicable to the Subordinate Officers and Pleaders of the Provincial Courts.(*o*)

Law Officers.

10. The Governor in Council is to direct what Law Officers should be appointed to the Zillah Courts, and order the manner of their appointment.(*p*)

11. No person whatever is, by reason of place of birth or by reason of descent, in any civil proceeding, exempted from the jurisdiction of the Zillah or Subordinate Courts.(*q*)

Decision of dispute between parties as to valuation of suit.

12. In suits which may be instituted in the Zillah Courts, if the Plaintiff should state his cause of action to exceed 10,000 Rupees, and the Defendant in answer, deny such statement, and allege the produce, amount, or value to be such as to render the suit cognizable by a Subordinate Zillah Court in the first instance, the Zillah Judge should cause such enquiry to be made, as may appear necessary, to ascertain whether the suit be cognizable in the Subordinate Zillah, or the Zillah Court; the determination of the Zillah Court upon this point being final; provided, that no such objection to the Plaintiff's statement of the cause of action be received from the Defendant, unless offered in answer to the Plaint in the first instance.(*r*)

13. Should the Zillah Court determine that the suit is cognizable in the Subordinate Zillah Court, the stamp duty paid

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(*l*) Sec. 14, Reg. II, 1802.
Sec. 4, Reg. IV, 1802.
(*m*) Ibid.
Sec. 3, Act XXXIII, 1854.
(*n*) Cl. 4, Sec. 15, Reg. XV, 1816.
Sec. 1, Act XXXIII, 1854.
(*o*) *Vide pages* 252 and 262.
(*p*) Sec. 51, Act. VII, 1843.
Vide page 361.
(*q*) Sec. 2, Act. XI, 1836.
(*r*) Sec. 5, Reg. XII, 1809.

by the Plaintiff should be returned to him, and he be left to institute his suit *de novo* in the Subordinate Zillah Court. If any Pleaders have been employed in the Zillah Court, that Court should adjudge to them such proportion of the established fee, not exceeding one-fourth, as it may judge adequate, to be paid by the Plaintiff.(*s*)

Rules for guidance in trial of original suits referred by Sudr Court, and in appeals preferred from decisions of lower Courts.

14. In suits or complaints which may be transmitted by the Sudr Adawlut to be tried and determined by the Zillah Courts, and also in appeals from the decisions of the Subordinate Courts within their jurisdiction, except as to hearing witnesses and receiving evidence, the Zillah Courts are to proceed in the same manner, and with the like powers and authority, and subject to the same restrictions, limitations and exceptions, as are prescribed to those Courts.(*t*)

Process.

15. All processes issued by the Sudr Adawlut and directed to the Zillah Court, or originating in the Zillah Court, should be served under the orders of the Zillah Judge, by the proper Officer of the Court.(*u*)

Reference of suit to Subordinate Zillah Court,

16. The Zillah Courts are empowered to receive any original suit or complaint, which may be cognizable in any Subordinate Zillah Court within their respective jurisdictions, and to command the Judge of such Subordinate Court, by a Precept under the seal of the Court, to receive the suit or complaint, and proceed to hear and determine it; provided proof be previously made to their satisfaction, that the Judge refused or omitted to receive or proceed in it. If the Plaintiff refuse or neglect to proceed in the suit or complaint, for six weeks after the receipt by the lower Court of the order of the Zillah Court, the Judge of such lower Court may dismiss the suit or complaint, notwithstanding such order. In such cases, the Judge, within one week after the dismission of the suit, is to certify to the Zillah Court under his hand, and the seal of the Court, that the suit or complaint has been dismissed, and the grounds of the dismission.(*v*)

and Petitions.

17. The Zillah Courts are empowered to receive any Petitions respecting suits or matters that may be depending, or have been decided, in any Subordinate Zillah Court within their respective jurisdictions; and provided it be proved to their satisfaction, that the Petition was presented, or that due means were used to effect its

(*s*) Cl. 2, Sec. 5, Reg. XII, 1809.
(*t*) Sec. 11, Reg. IV, 1802.
(*u*) Sec. 15, Act VII, 1843.
(*v*) Sec. 7, Reg. IV. 1802.

being presented to the Judge, and that he refused or omitted to receive it and proceed on it; or in the last mentioned case, that undue means were used by any of the Officers of the Court to prevent the Petition being presented, the Zillah Court is empowered to issue a Precept under its seal, commanding the Judge to receive the Petition, and to proceed respecting it according to the Regulations.(w)

Decisions of European Officers appealable to Zillah Judge.

18. In every Zillah in which there is a Subordinate Court constituted according to Regulation VII. of 1827, the Zillah Court should take cognizance of appeals from the decisions of European Officers of Government.(x)

Prosecutions against Magistrates,

19. Prosecutions against Magistrates and their Assistants under Section 43, Regulation IX of 1816, should be instituted in the Zillah Courts.(y)

against Sudr Ameens and District Moonsiffs;

20. Civil actions and criminal prosecutions against District Moonsiffs, under clauses 1 and 2, Section 8, Regulation VI, of 1816; and against Sudr Ameens under Section 13, Regulation VIII, of 1816, should be brought before the Zillah Court.(z)

against Punchayets.

21. It is competent to Zillah Judges, to pass orders of their own authority, on complaints preferred to them under Section 11, Regulation VII, of 1816, according to Clause 4 thereof.(a)

22. The Zillah Judge is competent to receive, and pass orders of his own authority on complaints preferred to him, under Section 27, Regulation VII, of 1832.(b)

Misconduct of Sub Judge or P. S. Ameen to be reported to Sudr Court.

23. In cases in which it may appear to the Zillah Judge, that the Judges of the Subordinate Zillah Courts have been guilty of negligence or misconduct in the discharge of their duty, he is to report the circumstances to the Sudr Adawlut.(c)

Power to suspend Sudr Ameen or District Moonsiff,

24. Whenever a Sudr Ameen or a District Moonsiff may be guilty of any gross act of misconduct, it is competent to the Zillah Judge to suspend such Sudr Ameen or District Moonsiff, reporting the circumstances without delay, for the final determination of the Sudr Adawlut.(d)

(w) Sec. 8, Reg. IX, 1802.
(x) Sec. 6, Act VII. 1843.
(y) Sec. 38, Ibid.
Vide page 380.
(z) Sec. 23, Act. VII, 1843.
Vide pages 143 and 337.
(a) Sec. 20, Act VII, 1843.
Vide page 67.
(b) Sec. 22, Act VII, 1843.
Vide page 73,
(c) Sec. 10, Reg. IV., 1802.
(d) Sec. 16, Act. VII, 1843.
Ch 2, Sec. 8, Reg. VI, 1816.

25. The Zillah Judges are to recommend to the Sudr Court the persons they may deem fit for the office of District Moonsiff.(*e*)

and to recommend persons for office of D. Moonsiff.

26. All applications for leave of absence from Subordinate Judges and Principal Sudr Ameens, should be forwarded to the Zillah Judges, and in transmitting them to the Sudr Adawlut, the Zillah Judge should, in cases in which the leave applied for does not exceed three months, suggest an arrangement for carrying on the duties of the office during the absence of the permanent incumbent. The Zillah Judge should guard against any unnecessary delay in the transmission of such applications.(*f*)

Mode of submitting applications for leave from Sub Judges and P.S.Ameens.

27. Leave of absence for a period not exceeding one month, may be granted to District Moonsiffs by the Zillah Judge,(*g*) who should notify to the Sudr Court all cases in which he may grant such leave, and at the same time explain what is the state of business in the Court of the Moonsiff, and whether it would be desirable to make arrangements for supplying his place during his absence.(*h*)

Zillah Judge may grant one month's leave to D. Moonsiffs,

28. Applications from District Moonsiffs for leave for a longer period than one month, must be submitted by the Zillah Judge to the Sudr Adawlut.(*i*)

longer leave to be obtained from Sudr Adawlut.

29. Zillah Judges cannot give over, or resume, charge of office on a Sunday. If a Zillah Judge should rejoin his station on the expiration of leave allowed him, on a Sunday, he ought not to receive charge of his office until the following Monday, and he will not be subject to stoppages for the delay, provided he actually and *bonâ fide* returned to his station within the period of leave granted to him. In such case he will report that he rejoined his station on the date of his actual return, but the day being Sunday, he received charge of his office on the day following. This rule is applicable to all Judicial Officers.(*j*)

Cannot give over, or resume Office on Sunday.

30. The Zillah Judge cannot require the Subordinate Courts to furnish him with translation of any proceedings or papers written in the country languages.(*k*)

Translates of proceedings not to be required from lower Courts.

(*e*) Sec. 6, Reg. VI. 1816.
(*f*) S. U. Pro. 19th March 1849.
(*g*) C. O. 11th May 1849, No. 114 C.
(*h*) C. O. 20th April 1850. No. 116. C.
(*i*) C. O. 11th May 1849. No. 114. C.
(*j*) S. U. Dy 14th October 1852.
(*k*) Sec. 31, Reg. IV, 1802.

Periodical statements to be submitted to Zillah Judge.

31. The prescribed periodical Statements and Returns are to be submitted to the Zillah Judge, by the various Courts subordinate to him, who will review the same.(*l*)

References from lower Courts to be addressed to Zillah Judge.

32. References by Subordinate Judges, Principal Sudr Ameens, and District Moonsiffs, regarding the constructions of the Regulations, are to be made to the Zillah Judge, who will submit them to the Sudr Adawlut; and all references generally by the lower Courts are to be addressed to the Zillah Court.(*m*)

(*l*) S. U. Pro. 9th Oct. 1843.
(*m*) C. O. 11th December 1824.
C. O. 31st August 1829.
S, U. Pro. 15th April 1845,

APPENDIX.

I.

RULES FOR THE EXAMINATION OF CANDIDATES FOR THE OFFICES OF DISTRICT MOONSIFF AND PLEADER IN THE COURT OF SUDR UDALUT AND THE SEVERAL COURTS SUBORDINATE THERETO.

Rules for examination of Candidates for Offices of District Moonsiff and Pleader.

1. The following rules are promulgated with the sanction of Government in supersession of all previous rules for the examination of Candidates for the Offices of District Moonsiff and Pleader in the Sudr Court or in those of the Zillah Judges, Subordinate Judges, Principal Sudr Ameens and Sudr Ameens.

2. Examinations of Candidates for the office of Moonsiff specially are to be discontinued. The examinations to be hereafter held shall be of Candidates for the Office of Pleader in the Sudr Court, or in the Court of a Zillah Judge, Subordinate Judge, Principal Sudr Ameen, or Sudr Ameen. The applications preferred by Candidates shall state that they wish to be examined for the Office of Pleader, and the diplomas granted to those who may pass shall specify that they are eligible for the Office of Pleader in the Courts abovementioned. Only the holders of such diplomas, and those who have already passed for Moonsiffs, but are still unemployed as such, shall be eligible to the Office of Moonsiff.

3. The examination of Candidates for the Office of Pleader in the Sudr Court, or in the Courts of the Zillah Judges, Subordinate Judges, Principal Sudr Ameens or Sudr Ameens, will be held yearly in the month of February at Chicacole, Masulipatam, Nellore, Bellary, Chingleput, Combaconum, Coimbatore, Calicut, Mangalore and Madura. The examination will be conducted by the Civil Judge, Magistrate, or Joint Magistrate, and the Subordinate Judge or Principal Sudr Ameen of the station at which the examination is held.

4. Candidates are required to send in their applications in English in the form A., to the Judge of the Zillah within which they reside, who shall grant a Certificate in the form B., after making such inquiries as he may deem proper to ascertain that the applicant is a person of respectable connections, good character and suitable attainments. If, however, the inquiries made

Rules for examination of Candidates for Offices of District Moonsiff and Pleader.

on these points prove unsatisfactory, or if the applicant be unable to produce credentials to his respectability, past conduct, and general qualifications, the Judge shall reject the application.

5. The Chief Magistrate of Madras is authorised to grant Certificates to parties who reside in that city.

6. The Principal of the Madras College and the Head Masters of the Government Provincial Schools are also authorised to grant Certificates to *bonâ fide* students of the institutions under their charge; but all such Certificates granted by the Head Masters of the Government Provincial Schools are to be countersigned by the Judge of the Zillah in which the School, or College, may be situated, after that Officer shall have made the inquiries required in ordinary cases.

7. The applications are, in all cases, to be presented, at least, two months before the date fixed for the examination, and shall specify the name of the station at which the Candidate may desire to be examined, provided that no examination shall be held at any station other than those above-mentioned.

8. Every Certificate granted by a Zillah Judge or by the Head Master of a Government Provincial School countersigned by a Zillah Judge, shall be transmitted by the latter Officer to the Court of Sudr Udalut, who, if they be aware of no objection, shall forward it to the Judge of the station at which the Candidate has applied to be examined, with their opinion expressed in the following terms:

"The Sudr Udalut, having inspected the Certificate, are aware of no objection to the examination of the applicant."

(Signed) _____

Register.

9. No Certificates are to be granted, but to persons who may be inhabitants of, or employed within, the jurisdiction of the Officers granting them.

10. Persons under the age of 21 are not eligible to examination.

11. The date on which the application is presented is to be noted thereon, immediately under the application, and at the head of the tabular form.

12. When a person, who has received a Certificate, presents himself for examination, the Committee, if they shall be aware of objections to his examination on the score of character, shall refuse to proceed with his examination, and shall declare their objection in writing on the face of the Certificate, and transmit

it to the Sudr Udalut for such orders, or for such further inquiry, as the Sudr Udalut may think proper.

Rules for examination of Candidates for Offices of District Moonsiff and Pleader.

13. If the Judge of a District have good and sufficient grounds to believe, from any proceeding, or other information officially before him that any Moonsiff or Pleader under his control, is not sufficiently qualified to discharge, in a proper manner, the duties of his situation, he may require such Moonsiff or Pleader to present himself for examination before the Divisional Committee when next held; and any Moonsiff or Pleader, who, being so required, may refuse to submit to examination, or, being examined, may fail to obtain a diploma, shall forfeit his appointment, and shall not be re-appointed to a Moonsiffship or Pleadership until he obtain a diploma of fitness.

14. Judges, who may require Moonsiffs or Pleaders to present themselves before the Divisional Committee for examination in persuance of the foregoing rule, shall intimate the same to the Committee at least twenty-five days before the date fixed for the examination.

15. Twenty days previous to the examination, the Judges of Chicacole, Masulipatam, Nellore, Bellary, Chingleput, Coimbatore, Combaconum, Calicut, Mangalore and Madura, will report to the Court of Sudr Udalut the number of applicants whose names are registered for examination.

16. The examination shall be partly *vivâ voce*, and partly written answers to prepared questions.

17. The written questions will be framed by the Court of Sudr Udalut, from the Regulations and Rules of practice for the guidance of the Courts of Civil Justice, and will be forwarded by them to the Examination Committees, prior to the date fixed for the examination.

18. The questions are to be answered by the Candidates, without reference to Books or other sources of information, in the presence of two Members of the Examination Committee, one of them being the Judge. The several Members of the Committee however, shall examine the replies, and report on the eligibility of the Candidates. Candidates will be at liberty to give their replies in whatever language they please; but it will be the duty of the Committee to satisfy themselves that every Candidate, who may be considered qualified in other respects for the situation of Pleader, possesses also a competent knowledge of one of the vernacular languages of the country.

19. After the Candidates shall have delivered their written replies to the questions, the record of a suit, which has been decided on its merits, shall be read by a Gomastah, *seriatim*, the

Rules for examination of Candidates for Offices of District Moonsiff and Pleader.

final decree excepted, to the several Candidates, who shall then be required to record, in any language they may prefer, their opinions on the points at issue between the parties, and the manner in which the suit ought to be decided agreeably to the Regulations and the Law of the parties. The opinions thus recorded, shall be examined by the whole of the Committee, to enable them to judge of the capacity and intelligence of the Candidates.

20. The oral examination shall be conducted by a full Meeting of the Examining Committee, who shall examine each Candidate separately by questions relating to the Regulations and Acts, and to the constitution, extent of jurisdiction, powers and course of procedure of the Civil Courts.

21. At the conclusion of the examination, the Committee shall grant diplomas of qualifications in the form C. to such of the persons examined, as they may consider deserving; and, at the same time, forward duly certified lists of such Candidates to the Sudr Udalut.

22. No Member of any Committee shall vote regarding any Candidate, who may be in any way related to, or connected with, him.

23. Candidates, who may be rejected, shall be entitled to appear at subsequent examinations, provided, however, that such Candidates shall renew their Certificates from the Zillah Judge and that they shall be admitted to examination by the Sudr Udalut previously.

24. Persons who have passed the examination shall be eligible *for appointment* either as Moonsiff, or as Pleader in the Sudr Court, or in the Courts of the Zillah Judges, Principal Sudr Ameens, and Sudr Ameens; but in the selection of persons for the Office of Moonsiff, preference shall be given to those Candidates who have been in practice as Pleaders, or have been employed in other situations in the Judicial or Revenue Department of the Public Service, and can produce testimonials of having performed their duties in an able and upright manner.

25. Lists of passed Candidates eligible to the Office of Moonsiff or Pleader, will be sent by the Court of Sudr Udalut in the form D. after each examination to the several Zillah Judges. The appointment of passed Candidates to the Office of Pleader will remain with the Zillah Judges, and the holder of a diploma, if not open to objection on the ground of general conduct and character, such objection being open to appeal to the Sudr Udalut, is entitled to an appointment in any Zillah on application, without reference to the number of Pleaders at the time attached to the Courts in it. Sunnuds are to be granted to them in the form E.

26. On the occurrence of a vacancy either temporary or permanent, in the Office of Moonsiff, the Zillah Judge will nominate any individual named in any of the lists for the approval of the Sudr Court.

Rules for examination of Candidates for Offices of District Moonsiff and Pleader.

27. The examination of Candidates for the Office of Pleader in the District Moonsiffs' Courts shall be conducted as heretofore by the Zillah Judge.

28. The holder of a Diploma, to plead in one of the Superior Courts, shall be eligible for the office of Pleader in a District Moonsiff's Court, on application.

29. Whenever it may be found impossible to obtain the services of the holder of a Diploma as a Pleader in any particular Court, the Sudr Udalut shall cause selection to be made of a fitting person for the Office, and appoint him temporarily to the same, until such time as he may obtain the requisite diploma, or a duly qualified person may be available.

(Signed) GEORGE ELLIS,
Register.

8th July, 1835.

A

Rules for examination of Candidates for Offices of District Moonsiff and Pleader

A.

The application of _____ inhabitant of _____

Whereas I am desirous of becoming a Candidate for the situation of Pleader in the Sudr Court, or in the Court of a Zillah Judge, Subordinate Judge, Principal Sudr Ameen or Sudr Ameen, I request that, after making the necessary inquiries, you will grant me a Certificate prescribed by the rules for the examination of Candidates.

Application received on the _____,

(Signed) _____

1	2	3	4	5	6	7	8	9	10
Name of the applicant and that of his Father	Age	Religion and Caste	Family residence, viz Town or Village and Zillah	Particulars relative to the family and connections of the applicant which may seem worthy of notice	Statement of past employment in the service of Government	Statement of landed or other property belonging to the Nominee, and where situated	Statement of whether the applicant is a debtor or creditor of other parties, and if so, the place of residence of his debtor or creditor	Name of Government College or School, if any, in which the applicant was educated, number of years for which he was so educated, and statement of honors or prizes, if any, obtained by him in the last year of such education	Certificate of the Judge **B.** "I do hereby certify that I have satisfied myself that 'A B, the bearer of this Certificate is a man fully fitted, "by respectability, good character, and general information, 'to fill the office of Pleader, either in the Sudr Court, 'or in the Courts of the Zillah Judges, Subordinate Judges, "Principal Sudr Ameens or Sudr Ameens, and that he "is entitled to the privilege of examination as to his qua-"lifications for the office" _____ *Judge.*

Zillah _____

The _____

Rules for examination of Candidates for Offices of District Moonsiff and Pleader.

C.

We hereby certify that _____ was examined at the yearly examination held at _____ in the month of _____ 18 _____, and that we consider him duly qualified, from his knowledge of the Native languages, and of the laws and rules of practice for the guidance of the Courts of Civil Justice, to hold the office of Pleader in the Sudr Court, or in the Court of a Zillah Judge, Subordinate Judge, Principal Sudr Ameen or Sudr Ameen.

(Signatures of the Members.)

Name of Candidate.	Name of his Father.	Age.	Place of Residence.

Rules for examination of Candidates for Offices of Deputy Moonsiff and Pleader.

D.

List of persons who have received Diplomas, certifying that they have passed an examination and have been declared competent to serve as Pleaders in the Court of Sudr Udalut or in the several Courts subordinate thereto.

Name.	Name of Father.	Residence.	Acquirements.	Date and place of examination and No. in the list.	Certificate granted by what Committee or Judge, and under what date.	Remarks.

Register.

E.

In conformity with the provisions of Regulation XIV. of 1816 and Act I. of 1846, you _____ are hereby appointed to the office of Pleader in the Zillah Court of _____. You will not be liable to be removed from your situation so long as you may conduct yourself with propriety, and discharge your duty with zeal and integrity, under the rules contained in the Regulations which now are, or may hereafter be in force.

Judge.

II.

Rules for Examination of Candidates for Office of District Moonsiff and Pleader.

The Judges of the Court of Sudr Udalut hereby notify, with reference to the rules lately published by them for the examination of Candidates for the Offices of District Moonsiffs and Pleaders in the Court of Sudr Udalut, and the several Courts Subordinate thereto; that only holders of such diplomas as are therein described, and those who have already passed as Moofty Sudr Ameens, but are still unemployed as such, shall be eligible to the Office of Moofty Sudr Ameen.

(Signed) GEORGE ELLIS,

16*th July*, 1855. *Register.*

III.

The Court of Sudr Udalut with the sanction of Government hereby intimate with reference to Rule 17 of the Rules lately published for the examination of Candidates for the Offices of District Moonsiffs and Pleaders, that Candidates will also be examined in the Hindoo and Mahomedan Law of Inheritance, Gift, Will, Sale and Mortgage.

The Court of Sudr Udalut further intimate that previous to entering upon the examination prescribed by Rule 17, any European or East Indian Candidate will be subjected to a preliminary examination in one of the following Vernacular languages, Tamil, Teloogoo, Malayalum or Canarese.

The examination in question is to be held the day previous to the one fixed for the examination prescribed by Rule 17, and no Candidate by whom this first trial is not satisfactorily passed is to be allowed to compete further on that occasion.

1st. The Candidate will be required to read without difficulty and to explain correctly in English, papers written by different persons in a plain running hand. These papers to consist of extracts copied from books or official Records.

2nd. An English paper to be translated into the Vernacular, without assistance. The translations to be substantially correct in meaning, and intelligible to a Native.

3rd. To dictate at sight an English Petition into the Vernacular. The translation to be written down exactly as dictated. The paper to be intelligible and substantially correct.

4th. To be tested in conversation with two or three Natives in such manner and to such extent as shall suffice to satisfy the

Rules for examination of Candidates for Offices of District Moonsiff and Pleader.

Committee of the Candidate's capability of making himself understood by Natives of different classes, and of understanding them.

5th September, 1855.

(Signed) GEORGE ELLIS,
Register.

IV.

The Judges of the Court of Sudr and Foujdaree Udalut with the sanction of Government, hereby notify that no Native Pleader, holding a Diploma under the Rules dated 6th July, 1855, will, in future, be permitted by them to practise in the said Court, who does not possess a sufficient acquaintance with the English language to enable him to read and understand the Orders and proceedings of Court, which in accordance with the provisions of Clause 4, Section XV. Regulation XV. of 1816 are recorded in that language.

(Signed) GEORGE ELLIS,
28th September, 1855. *Register.*

V.

RULES OF PRACTICE OF THE COURT OF SUDR UDALUT.

APPEALS.

Rules of Practice of Sudr Court.

I. Appellants who may have obtained time to file their detailed Petitions of Appeal shall be called in Court upon the first Court day after the expiration of the time allowed, and in the event of their failing to present their detailed Petition of Appeal, shall be again called on the following Court day, when, if the detailed Petition of appeal be not presented, the Appeal shall be struck off the file, after which it can only be admitted in accordance with the provisions of Act XVI. of 1845.

II. In every Appeal Suit, in which the Respondent may have been called upon to file an answer to the Appeal, the name of such Respondent and of his Vakeel shall be called in Court on the first Court day after the expiration of the time prescribed for filing the Answer, and in the event of his failing to present it on the two following Court days, the case shall be liable to be declared *exparte*, and at once posted for hearing.

III. All applications for the postponement of the hearing of Appeals, Special Appeal Petitions, or Miscellaneous Petitions posted for hearing, shall be made to the Court at least four days previous to the day fixed for the hearing.

SPECIAL APPEALS.

IV. With reference to the provisions of Clause 3d, Section IV. Regulation XV. of 1816, requiring Pleaders to certify on the back of applications for Special Appeals that they have duly considered the grounds for admission, and believe them to be well founded and sufficient, Pleaders will in future be expected to point out the particular Clause or Clauses of Section IV, Act XVI. of 1853, with reference to which they may consider their applications to be admissible.

COSTS.

V. It is ordered that in all cases in which suits are remanded for re-investigation, a statement of the costs incurred in the Sudr Udalut be appended to the proceedings, in order that the same may be charged to the parties in the revised Decree.

VI. The amount paid by Special Appellants for the Stamp paper used in copying the Decrees of the Lower Courts shall be invariably included in the costs decreed in Special Appeals.

COPIES.

Rules of Practice of Sudr Court.

VII. In cases in which Pleaders are employed, the attested copies of the orders passed shall be delivered to the Pleaders, and not to the parties in the case.

PETITIONS.

VIII. Petitions drawn up in an unintelligible or confused style will be returned to the parties, or Pleaders by whom they may have been presented.

IX. The presentation of any Regular or Miscellaneous Petition of Appeal engrossed on Stamp paper of less than the regulated value, or which may not be in conformity with the Circular Orders of 28th June 1828 and 15th February 1836, although given in within the time allowed by Law, does not necessarily preserve to the party the right of Appeal.

X. Parties who may have obtained time to file Counter Petitions, or other documents, shall be called in Court on the first Court day after the expiration of the time allowed, after which, in the event of their failing to present their counter Petitions, or other documents, the matter pending shall be proceeded with.

XI. Inconvenience having been experienced in the disposal of petitions presented to the Court of Sudr Udalut in Appeal from orders passed by the Civil and Session Courts, on Appeals preferred to them from the orders of the Subordinate Civil and Criminal Courts and Magistracy, by the omission of the parties appealing, to present with their Petitions copies of the orders passed by the Courts of original jurisdiction, the Court of Sudr Udalut resolve to direct that in such cases duly authenticated copies of all orders which may have been passed in the matter shall be invariably presented with the Petition of Appeal.

XII. No petition for review of judgment will be filed unless there be endorsed thereon, and signed by the party or his Vakeel in concise terms, a statement of grounds on which the review is considered to be admissible as set out in Section VI. Regulation XV. of 1816.

Reviews of Judgment are ordinarily to be applied for by the Vakeels engaged at the original trial, unless the parties to the suit have any grounds of dissatisfaction with their conduct, or unless such Pleaders shall refuse to apply for review.

The Court will notice the conduct of new Pleaders making such applications upon clearly insufficient grounds.

RULES FOR THE PETITION DEPARTMENT.

Rules of Practice of Sudr Court.

XIII. Special Appeal Petitions sent up by the Mofussil Judges or presented to the Court of Sudr Udalut, when the ground or grounds set forth therein relate to appreciation of evidence, shall not be translated, a statement of the nature of the Appeal being all that is required. The original Decree presented with such petitions need not be translated; the Appeal Decree, if in the Vernacular language, to be translated.

XIV. Sudr Miscellaneous Petitions or Motions filed with documents required to be produced in Court, or asking for copies of documents or for execution of Decrees or for extension of time for filing Answer, &c., shall not be translated, but laid before the Court on the day fixed for their disposal.

XV. All petitions or applications for review of Decrees or orders already passed, shall not be translated, but are to be brought on for disposal on the first Court day that the Judges who originally passed the Decrees or orders may be present in Court.

XVI. Petitions presented after the expiration of the appeal time shall not be translated without the permission of the Judges. Petitions explaining the causes of delay, to be laid before the Court on the first day of sitting.

XVII. The Sheristadar shall invariably bring to the notice of the Register all Petitions on stamps not engrossed in conformity with the Circular Order of the Sudr Udalut, No. 25, in order that the same may, if necessary, be returned to the parties.

XVIII. Petitions presented by Vakeels must be written in a language with which they are conversant.

ORAL PLEADINGS.

XIX. At the hearing of a cause in which both parties are represented, the Pleader on behalf of the Appellant shall briefly open his case and suggest and conduct the reading of the pleadings.

On the conclusion of the above Statement of Appellant's case, his pleader shall comment and argue in support of his Appeal.

The Pleader of the Respondent shall then reply to the comments and arguments advanced on behalf of the Appellant, and shall briefly state his client's case, and suggest and conduct the reading of the Pleadings and documentary papers on which he relies.

On the conclusion of the reading of the Respondent's papers, the Pleader for the Respondent shall comment and argue on his case.

Rules of Practice of Sudr Court.

The Pleader on behalf of the Appellant shall then be entitled to reply, but not to open any fresh matters for argument.

Should there be more Pleaders than one on one or both sides, they shall arrange between themselves, the order in which they will conduct the oral pleadings under the five preceding rules, and inform the Court of the same at the commencement of the cause; provided, however, that no more than one Pleader shall be heard at each of the stages of the oral pleadings indicated by the foregoing rules.

Every Pleader must confine himself to the subject matter of the case before the Court; and no Pleader shall be allowed to speak out of his turn, unless for the purpose of giving any short explanation of any paper read that may be necessary, or to clear any misunderstanding of matter previously brought by himself to the notice of the Court. No Pleader shall be heard after a case is closed, except in answer to questions put by a Judge.

XX. Whenever a Pleader in the Court of Foujdaree Udalut may desire to be heard orally on behalf of a prisoner, or prisoners, in a trial set down for reference to the Court of Foujdaree Udalut, he shall give notice to the Register of the Court that he has been retained by such prisoner or prisoners, and on the receipt of the record, an early day shall be fixed for the hearing of the case.

XXI. Whenever a Pleader in the Court of Foujdaree Udalut may desire to be heard orally on behalf of a prisoner in appeal from a sentence or order passed by a Lower Court in a Criminal trial, he shall present a Petition praying to be so heard, in which shall be set forth specifically, and under distinct heads, the pleas of fact and of law upon which the appeal rests; provided always that it shall be competent to such Pleader, with the permission of the Court, to adduce, at the hearing of the Appeal, any further pleas of the Law he may desire to argue.

XXII. No application will be entertained by the Court of Foujdaree Udalut for a review of any sentence or order passed by the Court in any Criminal trial, unless such Application be founded on a plea of Law, or of practice having the force of Law.

XXIII. No Pleader will be heard in a referred trial or in a trial called up by the Court of Foujdaree Udalut, on perusal of the Calendar or Report of the Case, unless the application for hearing shall have been made previous to the receipt of the record in the Court of Foujdaree Udalut.

PLEADERS.

XXIV. It having been brought to the notice of the Judges of the Court of Sudr Udalut, that since the enactment of

Act I. of 1846, a practice has arisen among the Vakeels in the Courts in this Presidency of entering into conditional agreements with their clients in regard to the remuneration to be made to them for their professional services; the amount of such remuneration, and, in some instances, the question whether any remuneration at all shall be given being made dependant upon the result of the cause, the Judges deem it necessary to denounce the practice in question as being altogether illegal, and to declare that any Vakeel in the Court of Sudr Udalut or in any of the Courts under their jurisdiction, entering into any agreement, with his client, of the nature of those adverted to, will render himself liable to dismissal from office under the provisions of Section VII. and X. Regulation XIV. of 1816.

Rules of Practice of Sudr Court.

It is to be inferred that the practice has originated in a mistaken construction of Section VII. Act I. of 1846, which allows parties employing authorized Vakeels in the Courts, to settle with them by private agreement the remuneration to be paid for their professional services. It cannot, however, have been the intention of the Legislature that the agreements referred to should have reference to other than a fixed payment altogether irrespective of the result of the cause; for to suppose that any other course was contemplated would involve the recognition of a practice tolerated in no other Courts, and which in the inducements it would hold out to false and vexatious litigation, and the temptation to dishonesty it would afford to the Pleaders by giving them an undue interest in the result of the causes in which they might be engaged, is obviously calculated to prove most injurious to the administration of justice.

With a view to the more effectual prevention of the practice referred to, the Court of Sudr Udalut resolve to direct that in every case in which a Vakeel may be employed, he shall certify on the back of his Vakalutnamah that no agreement has been entered into by him with his client in contravention of Circular Order No. 129.

XXV. The Court of Sudr Udalut deem it necessary to prescribe the following rules for making the endorsement required by Section XXII. Regulation XIV. of 1816, upon Vakalutnamahs, and for the preparation of Vakalutnamahs when under the provisions of Section XXX. Regulation XIV. of 1816, two or more Pleaders are engaged by the same party.

XXVI. The Vakeel of the Court, or Barrister of Her Majesty's Supreme Court, to whom a Vakalutnamah may have been executed, shall under the word "accepted," which is to be endorsed on the Vakalutnamah, affix his signature together with the date on which such signature may be affixed.

Rules of Practice of Sudr Court.

XXVII. When a party may see fit to entertain two or more Pleaders, he shall execute a single Vakalutnamah, authorizing them jointly to act in his behalf, and the Vakalutnamah shall be endorsed by all the Pleaders named therein in the manner above prescribed.

XXVIII. When a party, after having executed a Vakalutnamah to one or more Pleaders, shall entertain one or more additional Pleaders, without withdrawing the management of his cause from the Pleader or Pleaders first retained, he shall execute a fresh Vakalutnamah empowering all the Pleaders retained by him jointly to act on his behalf, and the Vakalutnamah shall be endorsed by all the Pleaders named therein in the manner above prescribed.

XXIX. Pleaders having once unconditionally accepted a Vakalutnamah are bound under the provisions of Section VI. Regulation XIV. of 1816, to carry on the suits of their clients, and they shall not therefore, unless by permission of the Court, decline to plead in any case put down for hearing.

XXX. In the event of the absence, without leave obtained, of the Pleader or Pleaders in a case when it comes on for hearing, the case shall be postponed, and the Pleaders shall be called on the next three successive Court days. If the Pleaders be still absent, or fail to satisfy the Court in respect to their non-appearance, they shall be liable to be removed from the Office of Pleader under Section X. Regulation XIV. of 1816.

PLEADINGS.

XXXI. When Pleadings in English are filed, translations of them in Tamil or Telugoo must be furnished by the Parties or Pleaders presenting them, should such translations be required by the opposite party. Copies of all Pleadings and Motions must be filed with the original papers.

STAMPS.

XXXII. Whenever an order may be passed for the refund of Stamps, it shall be competent to the Pleader, employed by the party in whose favor the refund is ordered, to recover the amount, without filing any fresh Vakalutnamah for the purpose.

XXXIII. When a Pauper Appellant, whose Appeal has been dismissed by the Court of Sudr Udalut, may desire to present a Petition for review of judgment, such petition may be drawn on plain paper.

XXXIV. Act XV. of 1845, which exempts Native Officers or

Soldiers from the payment of Stamp duty on Plaints, &c., is not applicable to pensioned Native Officers or Soldiers. Rules of Practice of Sudr Court.

XXXV. For the return of documents, an application, made in open Court by the party or by his Vakeel, shall be sufficient, accompanied by a written memorandum signed by the party or Vakeel making the application specifying the document or documents sought to be returned.

Such memorandum upon the document or documents specified in it being returned, shall be placed with the record or bundle from which the said documents may have been taken, and shall be endorsed with the date of the order sanctioning the return of the documents.

Legislative Council. Standing Orders.

VI.

STANDING ORDERS OF THE LEGISLATIVE COUNCIL.

The following Extracts from the Standing Orders adopted by the Legislative Council on the 19th of August 1854, were published for general information.

PETITIONS.

How to be framed.

XXII. Petitions to the Legislative Council must relate to matters connected with the business of the Council. Every petition shall be superscribed "To the Honorable the Legislative Council of India" and shall be dated and signed by the Petitioner or Petitioners. It shall be in respectful and temperate language, and shall conclude with a distinct prayer.

Signature.

XXIII. Every Petition will be received as the petition of the person or persons only by whom it is actually signed.

How to be transmitted.

XXIV. All petitions shall be transmitted to the Clerk of the Council.

Abstract.

XXV. The Clerk shall make an abstract of every Petition so received.

How to be dealt with.

XXVI. If in the judgment of the Clerk the Petition be framed in conformity with Order No. XXII., he shall bring the petition under the consideration of the Council by reading the abstract thereof, and the prayer or the substance of the prayer of the petition, whereupon such petition shall be deemed to have been received by the Council.

If not in conformity with Order No. XXII.

XXVII. If in the judgment of the Clerk the petition be not framed in conformity with Order No. XXII. or if he have reason to doubt the authenticity of any signature thereto, he shall certify the same on the back of the Petition, and shall report the fact to the Council, in which case the Petition shall not be received by the Council except upon the motion of a Member.

How to be disposed of.

XXVIII. Any Petition received by the Council may, upon the motion of a Member, be disposed of in one or more of the following ways:

1. It may be ordered to be printed.

2. It may be referred to the Select Committee sitting on any Bill to which it relates.

3. It may be referred for report to a Select Committee to be appointed specially for that purpose.

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* Vide Fort St. George Gazette 3d October, 1854.

4. If no motion be made upon such a Petition, the Petition shall be laid upon the table, and afterwards deposited by the Clerk amongst the Records of the Council. Legislative Council. Standing Orders.

XXIX. If a Bill be pending peculiarly affecting private interests, and any person whose interests are so affected apply by petition to be heard by himself or his Council upon the subject of the Bill, an order may be made, upon the motion of a Member, allowing the Petitioner to be so heard either before the Select Committee on the Bill, or before a Committee of the whole Council, provided the Petition be received by the Clerk of the Council, before the Report of the Select Committee on the Bill shall have been presented. In no other case or manner shall any stranger be heard by himself or by his Council. When and how Petitioners may be heard.

XXX. Ordinarily no reply will be sent to a Petitioner. But the Clerk of the Council may be ordered to make such special communication to a Petitioner as the Council may direct. Reply to Petitions.

PROJECTS OF LAWS.

XXXI. If a Draft or Project of a Law be proposed by the Governor or Governor in Council of a Presidency, or by the Lieutenant-Governor of a Lieutenant-Governorship; the fact shall be reported to the Council by the Clerk, and the draft or project shall, together with any annexures thereto, be printed and recorded. If within four weeks from the day of such report being made, no Member shall make any motion upon the subject, it shall be the duty of the Member nominated by the Governor of such Presidency, or by the Lieutenant-Governor of such Lieutenant-Governorship, to bring the same before the Council, either by bringing in and taking charge of a Bill for the purpose of carrying the proposal into effect, or by making such other motion upon the subject of the proposal as he may think fit. Proposed by local Governors.

XXXII. Any final resolution of the said Council upon such proposal shall be communicated by the Clerk of the Council to the Government of the Presidency, or to the Lieutenant-Governor of the Lieutenant-Governorship, by whom the proposal was made. Final Resolution to be communicated.

XXXIII. Drafts or Projects of Laws proposed by private persons must be accompained by a petition praying that the same may be taken into consideration by the Legislative Council, and shall be dealt with in the manner prescribed by these orders under the head "Petitions." Proposed by private persons.

BILLS

LVI. Any Member may at an ordinary meeting of the Council move the first reading of a Bill. First reading.

Legislative Council. Standing Orders.

Notice of.

LVII. Notice of such intented motion shall be given by the mover, either at a previous meeting of the Council, or by sending the notice in writing to the Clerk of the Council two clear days before the day fixed for making the intended motion.

Inserted in Orders of the day.

LVIII. The motion of which notice has been so given shall be inserted by the Clerk in the orders of the day for the day appointed.

Reasons to be stated.

LIX. Upon the moving of the first reading of a Bill the mover shall state the object and intention of the measure, and the reasons upon which it is founded, and shall deliver to the Clerk of the Council the Bill which he proposes to be read with a brief abstract of each Section or Clause in the margin thereof, and also a statement, signed by himself and annexed thereto, of such object and reasons, and any extracts of correspondence or documents which may be necessary for a right understanding of the Bill.

No discussion upon such motion.

LX. Upon such motion no discussion shall be permitted, and the Bill shall be read a first time without question, unless the Bill relate to the public finances, to the constitution of the Army or Navy, or to the relations of the British Government with Foreign States, or shall affect the religious rites or usages of the Natives of India.

Notice of motion when necessary.

LXI. If the Bill relate to any of the matters mentioned in the last preceding order, notice of such intended motion must be given at an ordinary meeting of the Council, at least one week before the motion shall be made; and the question shall not be proposed by the President unless the motion be seconded.

Procedure on and after first reading.

LXII. On the first reading of a Bill the Clerk of the Council shall read only the title of it. The Bill with its annexures shall be printed, and a copy shall be sent by the Clerk of the Council to each Member.

Notice of second reading.

LXIII. After a Bill shall have been read a first time, notice may be given of a day on which the second reading of the Bill will be moved.

Debate upon second reading.

LXIV. When a motion for the second reading of a Bill shall have been made, the President shall propose the question, "That this Bill be now read a second time," upon which a debate may be taken only upon the general merits and principles of the Bill.

Bill to be referred to a Select Committee,

LXV. If the motion for the second reading of a Bill be carried, the title only of the Bill shall be read. Thereafter upon motion made, the Bill shall be referred to a Select Committee of the Council, of which the mover shall be the Chairman.

and published for general information.

LXVI. After the Bill shall have been read a second time and referred to a Select Committee, it shall be published in the Cal-

cutta Gazette for general information, unless the special instruction provided for by Order No. LXX., shall have been given to the Committee immediately after its appointment.

Legislative Council. Standing Orders.

LXVII. All written communications on the subject of Bills published for the general information shall be addressed to the Clerk of the Council, who shall cause the same, and also all such petitions as shall be ordered by the Council to be referred to the Select Committee on the Bill, to be printed, and a copy thereof to be forthwith laid before such Select Committee and to be sent to each Member of the Council.

Communications and Petitions on the subject of a Bill.

LXVIII. The Select Committee shall take into consideration the Bill, and all such written communications, and also all such Petitions as shall be referred to them, and shall prepare a report thereon, and shall in such Report propose any amendments of the Bill which they may think expedient. A copy of the Bill signed by the Select Committee shall be annexed to the Report, written or printed in such a manner as to distinguish the amendments, if any, proposed by the Select Committee, from the Bill as published.

Proceedings of Select Committee.

LXIX. As soon as the Report of the Select Committee is ready, it shall be presented to the Council. Provided that such Report shall not be presented before the expiration of the following periods, respectively, viz.

1. If the Bill relate to any part of the territories subordinate to the Presidency of Bengal, eight weeks from the date of the first publication.

2. In all other cases, twelve weeks from the date of the first publication.

Report of Select Committee. Publication of Bill.

LXX. Any Member, however, may move a special instruction to the Select Committee immediately after its appointment, directing it to submit forthwith a preliminary report, suggesting any alterations which it may deem expedient to make in the Bill previous to the publication thereof in the Calcutta Gazette, if such preliminary Report of the Committee shall be adopted by the Council, the Bill shall be amended accordingly, and published for general information.

Bill may be amended before publication.

LXXI. When the Report of the Select Committee shall be presented to the Council, it shall be laid upon the table; after which notice may be given of a day on which it will be moved that the Council do resolve itself into a Committee of the whole Council on the Bill.

Report of Select Committee presented.

LXXII. The Report of the Select Committee shall be printed, and a copy thereof, and also a copy of the Bill annexed to such Report, if any amendments of the Bill be proposed by the Report, shall be sent by the Clerk to each Member of the Council.

Report to be printed.

Legislative Council. Standing Orders.

Committee of the whole Council.

LXXIII. If the motion for going into Committee of the whole Council on the Bill be carried, the President shall leave the Chair, and the Chairman of the Committee shall take a place at the table of the Council. The Committee will then proceed with the Bill, and may make any amendments in any part of the Bill, or in the title thereof which they may think fit.

Proceedings of Committee of the whole Council.

LXXIV. In settling a Bill in a Committee of the whole Council, the Title, Preamble, and each Section or Clause of the Bill, as reported by the Select Committee shall be considered separately, commencing with the first Section of the Bill, and ending with the Preamble, if any, and the Title of the Bill.

Settlement of Clauses.

LXXV. The Chairman shall cause the number of each Section and Clause and shall read the marginal abstract thereof. If no motion be made thereon he shall put the question "that this Section (or Clause) stand part of the Bill." If any motion be made to amend the Section, or Clause, the Chairman shall state the line in which the amendment is proposed to be made; and upon such motion, or any other motion that may have been made, he shall proceed in the mode prescribed in these orders under the head "Motions."

How question is to be put on an amended Clause.

LXXVI. If any amendment of the Section or Clause be carried, the question shall be put by the Chairman "That this Section (or Clause) as amended, stand part of the Bill."

Preamble and Title.

LXXVII. A similar course shall be adopted with regard to the Preamble, if any, and to the Title of the Bill.

Amendment disallowed.

LXXVIII. Except as herein otherwise provided, no amendment of an earlier part of a Bill shall be proposed after the Committee has resolved upon a later part of the Bill; unless an amendment made in a later part of the Bill shall have been carried, which renders necessary an alteration in the language of an earlier part of the Bill.

Consideration of Clause postponed.

LXXIX. The Committee may allow the consideration of any Section or Clause to be postponed and taken out of its order before the vote has been taken on the question "that the Clause stand part of the Bill."

Suggesting amendment and asking questions without formal motion.

Provisso.

LXXX. In settling a Bill in a Committee of the whole Council, any Member without making a formal motion, may suggest an amendment thereof, or of any amendment proposed by another, or may ask for information respecting any part of the Bill, or any proposed amendment thereof; provided that the Chairman or any Member may require such suggestion to be put by motion made in a regular manner, and provided also that no amendment shall be made in a Bill except upon a question regularly put and determined upon motion.

Legislative Council. Standing Orders.

LXXXI. A Committee of the whole Council may adjourn its sitting, or a debate, to a time to be named, and on such adjournment the Council shall resume its sitting, unless it shall have been adjourned.

Committee of the whole Council may adjourn.

LXXXII. When a Committee of the whole Council shall have settled a Bill, the Chairman shall put the question, "That this Bill be reported to the Council with amendments" (or "without amendments," as the case may be.) If that motion be carried, the Chairman shall certify at the foot of the Bill settled in Committee of the whole Council in the following form.

Report of Committee of whole Council.

Certificate of Chairman.

This Bill stands as settled in Committee :o

(Signed)

Chairman of the Committee of the whole Council.

Dated, &c.

Thereafter the Council will resume its sitting unless it shall have been adjourned.

LXXXIII. The Bill as settled in Committee of the whole Council may be reported to the Council on the same day; after which notice may be given of a day on which the third reading and passing of the Bill will be moved.

Report of Committee of whole Council presented.

Notice of third reading and passing.

LXXXIV. If any amendment of a Bill be made in Committee of the whole Council, any Member may move that the Bill so amended shall be printed.

Re-printing of Bill.

LXXXV. Any Member may likewise move in Council that the Draft be re-published for general information, on the ground that the amendments which may have been adopted are of so new and important a nature that the Act ought not to be passed without being previously published for general information; and if the motion be carried, the amended Bill shall be published, and notice may be given of a day on which the third reading and passing of the Bill will be moved.

Re-publication for General information.

LXXXVI. Upon the order of the day for the third reading and passing of the Bill being read, any Member previously to the motion being made, may move that the Bill be re-committed to a Committee of the whole Council for the purpose of correcting any errors therein, or considering any proposed amendment thereof.

Re-committal of Bill to Committee of the whole Council.

LXXXVII. If the Bill be re-committed on such motion, the Committee shall settle the same and the Chairman shall again certify the Bill, according to the form prescribed in Order No. LXXXII, after which the Council may at once receive the report; and the third reading and passing of the Bill may be moved immediately.

Proceedings on re-committal.

Legislative Council. Standing Orders — Certificate of President.

LXXXVIII. If the motion for the third reading and passing of the Bill be carried, the President shall sign a certificate at the foot of the Bill in the following form:

This Bill was passed in the Legislative Council on the day of

(Signed)

President.

Assents may be recorded.

LXXXIX. After a Bill shall have been passed, or thrown out at any stage, any Member present and voting for the passing or throwing out of the Bill may record his assent, and his reasons of assent; and any other Member voting for the passing or throwing out of the Bill may affix his signature thereto for all or any of the reasons specified therein, or may add additional reasons for his assent, or may record his assent and reasons separately.

Dissents may be recorded.

XC. Any Member who was present and voted against the passing or throwing out of the Bill may record his dissent and his reasons of dissent, and any other Member voting against the passing or throwing out of the Bill may sign such dissent for all or any of the reasons specified therein, or may add additional reasons for such dissent, or may record his dissent and reasons separately.

No assent or dissent to be recorded unless notice given.

XCI. No Member shall be allowed to record his assent or dissent, unless he give notice of his intention so to do at the meeting at which the Bill shall be passed or thrown out.

Dissents within what time to be recorded.

XCII. No dissent shall be recorded unless delivered to the Clerk of the Council before the expiration of the next ordinary meeting after the passing or throwing out of the Bill.

Assents within what time to be recorded.

XCIII. No assent shall be recorded unless delivered to the Clerk of the Council before the expiration of the second ordinary meeting of the Council after the passing or throwing out of the Bill.

Governor General's assent when present.

XCIV. If the Governor General be not absent from the Council of India, the Bill when passed shall be sent by message to the Governor General, or to the Governor General in Council, in order that it may be submitted to the Governor General for his assent.

When absent.

XCV. If the Governor General shall be absent from the Council of India, the Bill so passed, together with the record of assent or dissent of any Member shall be sent by a message to the President in Council, in order that it may be submitted to the Governor General for his assent.

XCVI. If the Governor General give his assent, the Act shall be promulgated in the Government Gazette.

Legislative Council. Standing Orders.

Promulgation of Act.

SUSPENSION OF STANDING ORDERS.

CXXV. The Council may suspend all or any of the Standing Orders, and any Committee of the whole Council may suspend any Standing Order, so far as it relates to business then before such Committee. Provided that no motion for such suspension shall be proposed from the Chair, unless it shall be seconded. Such suspension ought to be rarely had recourse to, and never without cogent reasons given, to the satisfaction of the Council.

By Council.

By Committee.

CXXVI. Any Member voting against such suspension may record his dissent and the reasons thereof, and any Member voting for such suspension may record his assent and the reasons thereof. Provided that such recorded dissent or assent be given in at the next ordinary meeting of the Council.

Recording dissents and assents.

SPECIAL STANDING ORDER.

Any Draft Act, which, prior to the 20th of May 1854, was read in Council and published for general information by order of the Governor General of India in Council, may, upon motion, be referred to a Select Committee, or may be taken into consideration by a Committee of the whole Council; and such Committees shall proceed respectively in the manner prescribed in the General Standing Orders, after which the Council may proceed in the manner prescribed in the General Standing Orders in respect to Bills settled in Committee.

Bill published before 20th of May 1854.

(Signed) W. MORGAN,
Clerk of the Council.

JUDICIAL DEPARTMENT.

No. 683.

Extract from the Minutes of Consultation under date the 22d September, 1854.

Read the following letter from the Officiating Secretary to the Government of India.

(Here enter 25th August, 1854, No. 918.

Ordered, that Extract from the above letter, paras 2, 3 and 4, be communicated to the Court of Sudr and Foujdaree Udalut and to the Board of Revenue for their information and guidance.

2. Bills or Drafts Acts appearing in the Calcutta Gazette will as soon as possible after their reaching Madras be republished in the Fort St. George Gazette. The Court of Sudr and Foujdaree Udalut and Board of Revenue are required to keep themselves

Legislative Council. Standing Orders.

duly informed of all draft Acts relating to their own departments and to lose no time in laying before Government any observations which they may deem it necessary to offer on such drafts. It is perceived from No. LXIX of the standing orders of the Legislative Council of India that the interval between the publication of a Bill in the Calcutta Gazette and the bringing up of the report thereon by the Select Committee will ordinarily be twelve weeks, and the Legislative Member for the Madras Presidency has intimated his wish that any remarks on a published Draft may be despatched from Madras so as to reach him within ten weeks from the date of its original publication at Calcutta that he may be enabled to bring them before the Select Committee before the submission of their Report.

Extract from a letter from the Officiating Secretary to the Government of India, dated 25th August, 1854.

Para. 2. "Hereafter the practice of addressing special letters for the purpose of requesting the Government to favor the Legislature with observations and suggestions on any project of Law will be abandoned."

3. "The Government is requested to observe that the proper course for the future will be that the Secretary should address to the Legislative Council such observations and suggestions on every Bill which may appear in the Gazette, as it may desire to offer, and should forward them in a letter addressed to the Clerk of the Council under the Standing Order No. LXVII."

4. "The Governor General in Council requests that the Government of Madras will draw the attention of their Officers to this provision by Circular, and will intimate to them that they must henceforth look to the Government Gazette alone for information regarding projects of law before the Legislature."

(True Extracts.)

(Signed) T. PYCROFT,

Secretary to Government.

Uncovenanted Service Absentee Rules.

VII.

RULES FOR REGULATING LEAVE OF ABSENCE AND ACTING ALLOWANCES TO PUBLIC OFFICERS IN INDIA NOT IN THE COVENANTED SERVICE OF THE EAST INDIA COMPANY.

CHAPTER I.

RULES FOR APPLICATION FOR LEAVE OF ABSENCE.

Section I.* Leave of absence to Officers not in the Covenanted Service of the East India Company, receiving their appointments direct from Government, will be granted by the Government only under which office is held, on application made publicly through the regular channel in the Department to which the Applicant may belong; but in respect of all other Officers, it will be optional with the Local Government to delegate to heads of Offices or departments, power to act upon the Rules without special reference to higher authority.

Section II. Absence without leave will render the absentee liable to loss of appointment, and will be attended with entire forfeiture of salary for the whole period of such absence.

Section III. No leave of absence shall have any retrospective effect, except in cases of severe illness to be attested by Medical Certificate conforming in every respect to the directions contained in Section IV.

CHAPTER II.

RULES FOR SICK LEAVE.

Section IV. When an application for leave of absence is made on the ground of ill health, it must be accompanied by a statement of the case from the medical man by whom the Applicant has been attended, distinctly stating from personal observation, the nature of the disease, the symptoms by which it is manifested, the causes by which it has been probably produced, and the period during which it has existed so far as the knowledge of the Medical Officer extends; and by a certificate from the Chief Medical Officer of the station or district, or if at a Presidency Town, from a Presidency or other Official Surgeon, certifying after careful personal investigation, the necessity for temporary removal, and the period for which absence is, to the

* Vide Fort St. George Gazette 7th March, 1856.

Uncovenanted Service Absentee Rules.

best of his judgment, absolutely requisite for restoration to health. If the requisite leave be for a longer period than six months, the certificate must in the first instance be countersigned by the Superintending Surgeon of the division in which the Applicant may be located; and in cases of leave beyond Sea, be afterwards submitted, with the statement of the case, for the consideration and countersignature of the Members of the Medical Board.

The Certificate shall be given in the following form:—

I, A. B., Surgeon at or of —— do hereby certify that E. F. (here enter designation of office) is in a bad state of health, and I solemnly and sincerely declare that according to the best of my judgment, a change of air is essentially necessary to his recovery; and that the circumstances of his case are such as to render leave of absence for the period of —— absolutely necessary (or highly desirable.)

The following form shall be observed by the Superintending Surgeon and Members of the Medical Board in countersigning the Certificate:—

I (or we) do hereby certify that according to the best of my (or our) professional judgment, after careful consideration of his case, I (or we) believe the state of health of E. F. to be such, as to render leave of absence for a period of —— absolutely necessary (or highly desirable) for his recovery.

An application for extension of leave, must, if the Applicant be in India, be accompanied by a certificate to a like effect from the Medical Officer by whom the Applicant is attended together with a statement showing sufficient reason for the extension solicited; and such certificate must be countersigned by the members of the Medical Board, or by the Superintending Surgeon of the Division in which the Applicant may be located. In like manner, if the Applicant shall have proceeded beyond the Territories under the Government of the East India Company, he must furnish a certificate and statement to the required effect from a Surgeon or Physician, at the place of his temporary residence, by whom he has been attended; such attendance and the period of it to be stated, and the certificate to be countersigned by the Examining Physician of the East India Company if the Absentee is in Europe, or by the principal Medical Authority of the Colony or Country, to which the Absentee may have proceeded, or some sufficient reason stated for the want of such countersignature if not produced.

The Officer countersigning must either personally examine the Applicant, or state some sufficient reason why he has been unable to do so. When any of the required particulars are neglected, leave will be refused.

Uncovenanted Service Absentee Rules.

Section V. Leave of absence will be granted under the following limitations to servants who may be declared by a sufficient Medical certificate to require leave for the restoration of their health :—

1. The limit to leave on Medical certificate is fixed at three years during the entire period of service, of which not more than two years may be continuous, and two years only will be permitted to reckon as service qualifying for Pension.

2. Leave of absence on Medical certificate will not be granted for a longer period than twelve months at any one time, which may however be extended if necessary under renewed Medical certificate, for periods not exceeding six months within the limit of two years continuously. After a continuous, absence of two years on Medical certificate, an interval of two years shall elapse before futher leave on that account is granted.

3. During one year of the entire period of absence, under this Rule, the Absentee will be subjected to a deduction of one half, and during the remainder, to a deduction of two-thirds of his allowances, provided however that he shall in no case draw a larger sum than Rupees 6,000 (£600) per annum.

4. In cases of extreme urgency, the Heads of Offices are authorized to grant leave of absence on Medical certificate to the extent of one month, provided the same be immediately reported for the sanction of Government.

CHAPTER III.

RULES FOR LEAVE ON PRIVATE AFFAIRS.

Section VI. Leave of absence may be granted for one month in each year, or, to Judicial Officers, during the authorized closing of the Civil Courts, without deduction from salary.

Section VII. In addition to the above, and on sufficient cause being shown, leave of absence may be granted on private affairs, for not more than six months, one half the Absentee's salary being deducted for such period of absence, provided the rate of Rupees 6,000 (£600) per annum be not exceeded.

Clause 2. The leave granted under this section will be computed from the date of the Absentee's quitting his post to the date of his return thereto. A second leave of the same description cannot be taken till the expiration of six years from the date of return to duty from a former leave. No portion of the salary allowed to be drawn will be claimable till the Absentee shall have returned to his duty.

Uncovenanted Service Absentee Rules.

Clause 3. Leave taken under this, and the preceding Section will reckon as service qualifying for pension.

Section VIII. In addition to the leave which may be granted under the preceding Rules on Medical certificate or private affairs, Government may at any time under special circumstances, and at its discretion, grant leave of absence once during the period of service not exceeding twelve months on private affairs, without forfeiture of appointment, but without pay; such period of absence not to count as service towards Pension.

Section IX. No leave of absence on private affairs shall be claimable by any party whatever under these Rules as a matter of right; such leave will be granted only at the pleasure of the Government or its authorized Officers when the concession of the indulgence in no way interferes with the interests of the Public Service and it shall be the duty of the Government in every instance (except in the case of leave granted under Section VI) to consider and determine whether the grounds of the application are sufficiently urgent to justify the concession of the leave.

Section X.—Parties who may desire to draw their allowances while absent on leave, will be required to give security in such amount and form, as may be fixed by Government for the refund of any excess that may be drawn in case of their coming under retrenchment.

CHAPTER IV.

RULES FOR ALLOWANCES, ETC.

Section XI.—No person appointed to a situation under the Government shall draw the salary of his appointment for any period prior to the date of his joining it.

Section XII.—An Officer holding a situation appointed to one of equal or higher value, will, until he joins, draw so much of the salary of his new Office as may be equal to the salary of his former situation; provided he does not exceed the time allowed for joining under the following Rules; should he do so, no salary will be passed to him for such period in excess.

Section XIII.—The time ordinarily allowed for joining an appointment is to be calculated at the rate of fifteen miles a day (Sundays excepted) together with a week to prepare for the journey; but on occasions of emergency, it will be optional with the Government to prescribe the period within which any journey is to be performed.

Section XIV.—A person officiating temporarily in any situation, will draw so much of the salary of such situation as may

equal, the sum deducted on account of absence, from the real incumbent, and the substantive allowances of every Officer temporarily acting in a situation of superior emolument, will be subject to deduction at the same rate; *but no additional expense is on any account to be incurred by the absence of any Officer on leave.*

Uncovenanted Service Absentee Rules.

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ABBREVIATIONS USED

S. C.—Sudr Court.
Z. C.—Zillah Court.
Z. J.—Zillah Judge.
S. Z. C.—Subordinate Zillah Court.
S. J.—Subordinate Judge.
P. S. A.—Principal Sudr Ameen.
D. M.—District Moonsiff.
V. M.—Village Moonsiff.
E. M. C. R.—European Military Court of Requests.
N. M. C. R.—Native Military Court of Requests.
Adm. Gen.—Administrator General.
D. P.—District Punchayet.
V. P.—Village Punchayet.
M. P.—Military Punchayet.
R. P.—Revenue Punchayet.
Mis. Pet.—Miscellaneous Petition.

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